

THE CONSTITUTIONAL STATUS AND GOVERNMENT OF ALASKA

BY
GEORGE WASHINGTON SPICER

A DISSERTATION

Submitted to the Board of University Studies of the Johns
Hopkins University in Conformity with the Requirements
for the Degree of Doctor of Philosophy

1926

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BALTIMORE

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PREFACE

The following study was undertaken at the suggestion of Professor W. W. Willoughby, under whose direction it has been prepared. To him grateful acknowledgment is here made of kindly and constructive criticism and of stimulating inspiration. The writer is also indebted to Mr. W. F. Willoughby for training in the principles of administration which have found application in this study, and to President Frank J. Goodnow, an enthusiastic and stimulating teacher, for training in United States Constitutional Law, which has also found application in this study.

This work is primarily constitutional and administrative in character. The aim has been to give as clear a statement as possible of the present constitutional status of Alaska, and to show how government and law in that territory have been, and are being, administered. Some points have not received as adequate treatment as the writer would desire because of the lack of available material.

G. W. S.

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THE CONSTITUTIONAL STATUS AND GOVERNMENT OF ALASKA

CHAPTER I

THE ACQUISITION OF ALASKA

What is now the Territory of Alaska was, prior to 1867, a part of the Russian Empire and was known as Russian America. The name Alaska is said to have been derived from the Aleut word Alakshak, meaning "a great country or continent." Credit for the discovery of the coast of Alaska is generally given to Michail Gvozdef, a surveyor, who assumed command of an expedition, the purpose of which was to gain information concerning the "great land" to the east of Siberia whose existence was reported by inhabitants of the northeastern coast of Siberia. It is thought that Gvozdef touched the coast of Alaska near Cape Prince of Wales sometime during the year 1730, but information on this point is very meager.¹

Prior to this time, in 1728, Vitus Behring, a Danish captain in the Russian service, under instructions from Peter the Great, who desired to know if Asia and America were separated by the sea, or if they constituted one undivided body, had discovered and named St. Lawrence Island and had passed through the strait which bears his name, rounded East Cape, and continued northward along the Asiatic coast far enough to establish the fact that the land reported as lying east of Siberia was not a part of the continent of Asia.²

The results of this expedition gripped the imagination of

¹ Lester D. Henderson, Commissioner of Education, Historical Sketch of Alaska with Brief Outline of Resources and Civil Government, Juneau, Alaska, 1923. (Pamphlet).

² Charles Sumner, The Cession of Russian America to the United States, April 7, 1867, House Ex. Doc. No. 177, 40th Cong., 2d Sess.

the Russians and fired them with a desire to know more about this "great land" to the east and to discover trade routes to America, if possible. Accordingly a second expedition was organized under the command of Behring who volunteered for the service. Alexei Chirikof was second in command. The two vessels used in the expedition, the *St. Peter* and the *St. Paul*, were in charge of Behring and Chirikof respectively. According to the plan devised, the two vessels were to proceed together, but some days after setting out they became separated from each other, and, thereafter, the two commanders proceeded independently. On July 16, 1741, Behring saw and named Mt. St. Elias; Chirikof sighted the Alaska coast somewhere about Prince of Wales Island, on July 15, 1741. It was primarily on these voyages of Behring and Chirikof that Russia based her claim to the ownership of northwestern America.³

Further Russian explorations followed, prompted largely by the glowing tales of the wealth in furs that abounded in the new land. The expeditions of the next half century were confined chiefly to the Aleutian Islands and the Alaska Peninsula and had as their object the acquisition of wealth. Commenting on the motive of these explorations, Bancroft makes this statement:

Call it science or patriotism or progress, there is this to be said about the first Russian discoveries in America—little would have been heard of them for some time to come, if ever, had it not been for the beautiful furs brought back from Bering Island and elsewhere. Siberia was still sufficient to satisfy the tsar for purposes of expatriation, and the Russians were not such zealots as to undertake conquest for the sake of conversion, and to make religion a cloak for their atrocities; hence, but for these costly skins, each of which proclaimed in loudest strains the glories of Alaska, the Great Land might long have rested undisturbed.⁴

The cruelty with which the native inhabitants were treated by the fur hunters would seem to verify the above conclusion.⁵

³ Henderson, op. cit.; Hubert H. Bancroft, *History of Alaska*, (1885), chap. iii, pp. 68-70.

⁴ See Bancroft, op. cit., pp. 95-97; Henderson, op. cit.

⁵ Henderson, op. cit.

The eyes of other nations now turned to this strange land of the north, and other explorations followed in rapid succession. Minor explorations were made by Spain as early as 1774, and this was followed by several other Spanish explorations. In 1778 a noted English navigator, Captain James Cook, sailed up the western coast of North America and made his first discovery of the Alaska coast near the present site of Sitka. Less extensive explorations were conducted by the French Government about 1785.

Prior to the purchase of Alaska by the United States, little interest was manifested by Americans in the territory, and its waters were not frequented by American vessels. However, as early as 1856 surveys were made along the Aleutian Islands by Lieutenant William Gibson, U. S. N., commanding the *Fenimore Cooper*.⁶ Within the brief compass of this discussion it would not be feasible to treat of the important exploration journeys made by Americans into Alaska subsequent to the purchase of the territory.

The first permanent settlement of the Russians was established at Three Saints Bay, Kodiak Island, in 1783, and other settlements soon followed. For a long time the Russian settlements were without any regular government. They, it appears, were only temporary lodgments for purposes of trade, where the only rule of conduct was that might is right. Sumner, in his speech above cited, says: "The first trace of government which I find was in 1790, at the important Island of Kodiak, or the Great Island, as it was called, where a Russian company was established under the direction of a Greek."⁷ It appears that various smaller companies were established in connection with this larger one, all of which were, in 1799, merged into the single large trading company, known as the Russian American Company. This consolidation was confirmed by imperial ukase from the Emperor Paul. By this charter "the company was granted full privileges, for a period of twenty years, on the coast of

⁶ See Bancroft, op. cit., p. 576 n.

⁷ Ibid., p. 320.

North-western America, beginning from latitude 55° north, and including the chain of islands extending from Kamchatka northward to America and southward to Japan; the exclusive right to all enterprises, whether hunting, trading, or building, and to new discoveries, with strict prohibition from profiting by any of these pursuits, not only to all parties who might engage in them on their own responsibility but also to those who formerly had ships and establishments there, except those who have united with the new company.”⁸ Thus we see that by this charter the Russian American Company was, in effect, constituted the sole government in Alaska, and, being twice renewed, remained so, well nigh until the territory was transferred to the United States.

The circumstances which led to the transfer of Russian America to the United States are not easy to determine, but a discussion of such facts and contemporary opinions as are available will at least throw some light on this question. Russia, separated from her American possessions by a wide track of ocean, and by the breadth of her great empire, was unable to exercise any effective control or protection over them by direct action. In fact, this was never attempted. As has been stated, Alaska had been originally granted to the Russian American Company by imperial ukase and her government there had, in the words of Sumner, been “little more than a name or a shadow,” its only representative there being a fur company to which was later added an ice company.⁹

Doubtless the financial motive played no small part in the transfer of Alaska to the United States. Before the Crimean War the question of placing Alaska under imperial rule had been somewhat mooted, but such a project was dropped as being unpractical on account of the great expense involved in the protection of this vast territory and of maintaining there the machinery of a colonial government. For all this there could be seen no adequate return.

⁸ Quoted by Bancroft, *op. cit.*, pp. 380-381.

⁹ Sumner's Speech, *op. cit.*

Impending trouble with England served to confirm these impressions, and the fear that the English might seize Russian America undoubtedly played no small part in the movement to sell these possessions to the United States. With the bombardment of Petropavlesch and other incidents of the Crimean War, "the day seemed not far distant when the long-threatened struggle with England for supremacy in Central Asia"¹⁰ would begin. In this event Russia would, of course, need all her resources of men, ships and money. None of these could be spared for the protection of Russian America, a territory which Russia had never occupied and which she had probably never wished to occupy.¹¹ Indeed it was by foreign loans that Russia's railroads had been built and her wars aided. Said Sumner in his speech: "All must see that in those coming events which now cast their shadows before, it will be for her (Russia's) advantage not to hold outlying possessions from which thus far she has obtained no income commensurate with the possible expense for their protection."¹²

The danger of England's acquiring control of Alaska was also used in Congress as a lever in favor of the appropriation of the purchase money necessary to consummate the treaty of cession. Hon. Leonard Myers of Pennsylvania, speaking in the House of Representatives on July 1, 1868, in behalf of the appropriation of the purchase money, said: "Reject Alaska and there is scarcely a doubt that Russia, having once determined to part with it, would sell to England, and still less doubt that England tomorrow would seize the chance of taking it off our hands. . . . The British Empire, covering us on the north from ocean to ocean, even to the North Pole, would develop a formidable rival on the Pacific to that commerce and trade which now can be ours alone." Said Mr. Myers further: "No consolidation of foreign empire must be allowed between these seas. . . . England never volun-

¹⁰ Bancroft, *op. cit.*, p. 591.

¹¹ *Ibid.*

¹² Sumner's Speech, *op. cit.*

tarily contracted her possessions. Rest assured Alaska, if not ours will be transferred to Great Britain."¹³

The exact date on which negotiations for the transfer of Alaska to the United States began is not easy to determine. It appears, however, that the following movements for the purchase were made prior to 1867. The first mention of such a step is said to have taken place as early as during the administration of President Polk. In a letter published in the *Washington Daily Morning Chronicle* on January 28, 1868, Hon. R. J. Walker, Secretary of the Treasury in Polk's cabinet, refers to a letter of his, accepting Mr. Polk's tender to him of the office of Secretary of the Treasury, in which he had stated that "our just and rightful claim to the whole of Oregon will, I trust, be successfully asserted by you. This would leave no European power upon our Pacific Coast except Russia, whose well known friendship to us would, it is hoped, induce her then to cede to us her North American territory."¹⁴ Representative N. C. Banks, chairman of the committee on Foreign relations in 1868, speaking on the subject of the purchase of Alaska at the time said: "Once during Polk's administration the matter was discussed, but terminated without any formal offer or refusal."¹⁵ This statement was not challenged at the time, and was also mentioned by Sumner in his speech previously cited, and further substantiated by a statement of Mr. Myers, given at the same time.¹⁶ It would seem then that the story must have been current at this time.

In 1867, it was stated by certain officials that even as early as the Oregon debate in 1846-1847, the suggestion had been made that if the United States would insist on a boundary line of 54° 40' and obtain a cession from Emperor

¹³ Speech of Hon. Leonard Myers, House of Representatives, July 5, 1868, Cong. Globe, 40th Cong., 2d Sess.

¹⁴ Letter of R. J. Walker, on the Purchase of Alaska, Wash. *Daily Morning Chronicle*, Jan. 28, 1868.

¹⁵ Cong., Globe, part 5, pp. 385-392, 40th Cong., 2d Sess.

¹⁶ Victor J. Farrar, "The Background of the Purchase of Alaska," in Wash. Hist. Quarterly, vol. xiii, No. 2, April, 1922.

Nicholas, she might own the whole Pacific coast up to the arctic circle, but that the slave holding interest, then dominant in the Federal councils, wanted southern, instead of northern, extension, and that the project was regarded as impracticable, and the line of 54 degrees forty minutes was given up.¹⁷ Concerning this proposal, F. A. Golder, in an article written for the *American Historical Review*, April 1920, states that, "If such a proposal was actually made, there is not a word regarding it in the Russian diplomatic papers of that time and not a hint that the ministers of Alexander II had ever heard of it."¹⁸

The next movement for Alaska and probably the first intimation of a possible transfer of the territory made by Russia occurred in 1855, and was entirely a Russian movement, and only a "make-believe" at that. At the beginning of the Crimean War, the Russian American Company, knowing that Russia had no fleet in American waters to protect her colonies and fearful lest England would seize them, devised a fictitious sale of the territory to a San Francisco concern known as the American Russian Company. The contract, with blank spaces for the date of the sale and the purchase price, was sent to the Russian legation at Washington for approval. When it reached the minister, Stoeckl, he consulted Secretary of State Marcy, and Senator Gwin, of California, as to the wisdom of making public the sham transaction. They, being of the opinion that England would detect its true character and would not respect it, failed to advise the Russian Minister one way or the other. About this time reports were circulated that Russia was anxious to sell Alaska to the United States, and in the course of time the newspapers succeeded in convincing a number of people of the truth of this statement. Even Marcy and Gwin, thinking that there might be something in the report, saw Stoeckl and told him that if Russia would sell, the United States would buy and pay well there-

¹⁷ 40 Cong., 2 Sess., House Ex. Doc. No. 177, p. 12.

¹⁸ F. A. Golder, "The Purchase of Alaska," in *Amer. Hist. Rev.*, vol. xxv, p. 411; also Farrar, op. cit.

for, whereupon Stoeckl assured them that there was no truth in the newspaper reports and asked them to forget it.

In the meantime the Russian American Company had become very unpopular, even despised, in Alaska, and its capital had dwindled to very small proportions.¹⁹ There was great uncertainty as to the renewal of its charter for the fourth term, which meant that something would doubtless have to be done with the territory of Alaska.

The chief promoter of the sale of Alaska was the Grand Duke Constantine, brother of Tsar Alexander II, and an enemy of the Russian American Company. In April, 1857, he wrote a letter to Prince Gorchakof, Russian Foreign Minister, urging that the Russian American possessions be transferred to the United States, giving as his reasons, the small value of these possessions to Russia, the latter's great need of money, and the need of the territory by the United States to round out its holdings in the Pacific. To determine the worth of the possessions, he suggested that the retired officers of the Russian American Company should be consulted. This was done, and the prince made a report within about a month, but he was opposed to the sale of Alaska at this time, being anxious to protect the interests of the Russian American Company which was having considerable difficulties at this time. Gorchakof insisted that an immediate sale was not fair to the company, and, if there was to be such a sale, the initiative should come from the United States and not from Russia.²⁰

At some time during 1858-1859 Stoeckl, the Russian minister, went to Petrograd on a vacation and, on occasions while there, discussed Alaskan affairs with Prince Gorchakof, and it was agreed between them that in case the United States should make another move to purchase the territory it should be seriously considered. This opportunity soon came.

In December, 1859, during the administration of President Buchanan, Mr. Gwin, then Senator from California, held a

¹⁹ Golder, *op. cit.*, p. 412.

²⁰ *Ibid.*, p. 413.

number of interviews with the Russian Minister at Washington, in the course of which he stated unofficially that the United States would be willing to pay five million dollars for Alaska. While professing to speak for the president unofficially, Mr. Gwin stated "that Russia was too far off to make the most of these possessions; and that, we are near, we can derive more from them." In response to an inquiry of the Russian minister Mr. Gwin stated that "the United States would go as high as \$5,000,000 for the purchase," upon which the former made no comment. Mr. Appleton, the Assistant Secretary of State, on another occasion, also affirmed that the president was in favor of the purchase in as much as he thought the acquisition would be very profitable to the States on the Pacific; that he was ready to follow it up, but wished to know first if Russia was ready to cede, and that, if a favorable answer were returned by Russia on this point, he would confer with his cabinet and influential members of Congress regarding the matter. These proceedings, though entirely unofficial, were promptly communicated to the Russian Government, where it appears they received careful consideration. Within a few months a dispatch was received from Prince Gorchakof stating that the sum offered was not what might have been expected, but that it merited careful consideration; that the minister of finance was about to inquire into the condition of the territory, after which Russia would be in a position to treat with the United States.²¹ Accordingly the minister of finance sent a commission to Alaska to study conditions at close range and make a report thereon.

The subject, however, was now submerged by the approaching presidential election and then by the Civil War. Bancroft holds that owing to the small capital of the Russian American Company at this time (1860) and the uncertainty as to the renewal of its charter, it was not improbable that a positive offer of five million dollars would have been accepted, had not the outbreak of the Civil War put an end for several

²¹ Bancroft, *op. cit.*, pp. 591-592; Sumner's Speech, *op. cit.*, p. 8; Golder, *op. cit.*, vol. xxv, p. 416.

years to the negotiations.²² On this point Sumner says: "Had Russia been willing, it is doubtful if the controlling interest of slavery would have sanctioned any acquisition too far north for slavery."²³

The Russian commission sent to Alaska by the minister of finance returned in 1861 with a report which was unfavorable to the Russian American Company, but the opportunity for selling was no longer open. The franchise of the company was not renewed, and the ministers, not knowing what else to do, "allowed the company under certain minor restrictions, to exploit Alaska for a time longer."²⁴

At the conclusion of the Civil War, peaceful enterprise on the Pacific coast was directed towards the Russian possessions. Many of the people of Washington Territory had been employed in the fisheries of the British provinces, and were very desirous of the right to fish among the rich salmon, cod and halibut grounds of the Alaskan coast. In response to this desire a memorial was, in the winter of 1866, adopted by the legislature of the Territory, "in reference to the cod and other fisheries," which memorial upon being presented to the President was referred by the Secretary of State to the Russian minister, with some comments on the necessity of an arrangement that would avoid difficulties between the two powers.²⁵

Shortly afterwards another influence was brought to bear. Mr. Cole, recently elected Senator from California, acting in the interest of certain persons in that State, made an effort to obtain from the Russian Government a franchise to gather furs in a portion of its American possessions. In 1837 the Russian American Company had underlet to the Hudson Bay Company all its franchises on the mainland between 54° 40' and Mount St. Elias. This franchise, several times renewed, would expire in June 1868, and now Senator Cole proposed that an American Company, holding directly from the Rus-

²² Bancroft, *op. cit.*, p. 592.

²³ Sumner's Speech, *op. cit.*, p. 8.

²⁴ Golder, *op. cit.*, p. 417.

²⁵ 40th Cong., 2d Sess., H. Ex. Doc. No. 177, p. 4.

sian Government, should be substituted for the Hudson Bay Company,²⁶ and thus, as Sumner remarked, "the mighty Hudson Bay Company, with its headquarters in London, was to give way to an American company, with its headquarters in California." The Russian minister at Washington, who was seen by Mr. Cole a number of times on this subject, was not authorized to act, and Mr. Cole, after consulting with the Department of State, addressed Mr. Clay, the United States minister at St. Petersburg, who laid the application before the Russian Government. A letter from Mr. Clay, dated at St. Petersburg, February 1, 1867, stated that the lease of the rights of the Russian American Company to the Hudson Bay Company would expire in the following June, that the Russian American Company was in correspondence with the Hudson Bay Company in regard to the renewal of the lease for another term of twenty-five or thirty years, and that no action could be taken until some definite answer were received.²⁷

Meanwhile Mr. Stoeckl had, in October, 1866, returned to Russia on leave of absence, and had promised to do all in his power to promote friendly relations between the two countries. While he was at St. Petersburg the applications from the United States were considered, but the Russian Government was not inclined towards any arrangement of the nature proposed, nor had any answer that was acceptable come from the Hudson Bay Company.²⁸ Conditions were now serious with regard to these possessions. The franchises there were about to terminate. The existing government was woefully inadequate. The Government did not wish to take over the colonies nor did it wish to hand them over to another such exploiting agency as the Russian American Company, which now had failed in every industry that it had tried and was drifting rapidly towards bankruptcy. Something had to be done. The minister of finance, Reutern, and the Grand Duke

²⁶ Ibid., p. 133.

²⁷ Bancroft, *op. cit.*, p. 593; 40th Cong., 2d Sess., H. Ex. Doc. No. 177.

²⁸ Bancroft, *op. cit.*, p. 594.

Constantine now asked Stoeckl if the United States would buy Alaska. Stoeckl told them of the former offer and that Russia had made a great mistake in refusing it, but that there was some hope of its being renewed. The grand duke now laid the matter before Emperor Alexander, who thereupon called in the minister of foreign affairs and requested him to look into the matter.

In written memoranda, asked by the minister of foreign affairs, the grand duke, the finance minister, and Stoeckl all gave their opinion in favor of the sale of Alaska to the United States.

The above memoranda were submitted to Alexander II, who, on December 16, 1866, called together at his palace a committee composed of the Grand Duke Constantine, the minister of finance, the minister of foreign affairs, Stoeckl, Vice-Admiral Krabbe, minister of the Marine, and His Majesty, to discuss the Alaska question. After a discussion in which all took part, it was agreed to sell Alaska to the United States. The emperor then asked Stoeckl to return to Washington and conclude the deal.²⁹

When Stoeckl was leaving in February, 1867, to return to his post, he was given by Constantine a map on which the frontiers were traced, and was instructed by the minister of finance not to take less than five million dollars for the possessions. The minister, after spending a few weeks in New York, arrived in Washington early in March, and forthwith called on Secretary Seward. The two engaged in conversation regarding certain previous relations between their governments, and, after a few preliminary remarks, Seward inquired whether or not Russia would sell Alaska to the United States. Stoeckl was delighted at having won his point in leading America to take the initial step in the transaction. They both agreed that a transfer of the territory would be of mutual advantage, and, after consulting the other members of the Cabinet, Seward proceeded with the negotiations.

Stoeckl desired to have the initiative in the transaction

²⁹ Golder, *op. cit.*, p. 418.

come from Congress, but Seward insisted that the administrative nature of the action required secrecy, and assured Stoeckl, who was dubious of the Senate, that there would be no difficulty in the ratification by that body.

In agreeing upon the price to be paid for Alaska, Stoeckl took advantage of Seward's manifest eagerness to buy, and demanded seven million dollars, to which the Secretary finally agreed.

Some difficulty now arose as to how the money should be paid. Stoeckl had been advised to demand that the money should be paid in London and that the United States should take over certain obligations of the Russian American Company. Seward flatly rejected these conditions, and finally a compromise was reached. On the 23rd of March Stoeckl received a note from Secretary Seward offering to add, subject to the approval of the President, two hundred thousand dollars to the formerly proposed sum of seven million dollars, on condition that the cession be "free and unencumbered by any reservations, privileges, franchises, grants, or possessions by any associated companies, whether corporate or incorporate, Russian or any other."³⁰ Two days later an answer was received, stating that the minister believed himself authorized to accept these terms. On the 29th final instructions were received by cable from St. Petersburg, and on the same day a note was sent by the minister to the Secretary of State, informing him that the Czar consented to the cession of Russian America for the stipulated sum of \$7,200,000 in gold, and that he was invested by the Emperor with full powers to negotiate and sign the treaty. At four o'clock on the morning of March 30, 1867, the treaty was signed by Secretary Seward on part of the United States, and by Mr. Stoeckl on the part of Russia without further negotiation.³¹ The treaty was conceived, initiated, prosecuted, and completed in an unusually simple manner without protocols or dispatches. Two brief notes constituted all the written mat-

³⁰ 40th Cong., 2d Sess., H. Ex. Doc. No. 177.

³¹ Bancroft, *op. cit.*, p. 594; Sumner's Speech, *op. cit.*, p. 10.

ter that passed between the negotiators. In the one of these notes Secretary Seward insisted upon that clause in the sixth article of the draft which declares the cession "to be free and unencumbered by any reservations, privileges, franchises, grants or possessions by any associated companies etc.," and stated that with the President's approval he would add \$200,000 to the purchase money on that account. In the other note Mr. Stoeckl stated that the Prince Gorchakof informs him that the Emperor of all the Russias gives his consent to the cession of the territory for the stipulated sum of \$7,200,000 in gold, and that he was invested by the Emperor with full powers to negotiate and sign the treaty.³²

But all difficulties were not yet overcome. The Senate had to ratify the treaty and the appropriation of the purchase money by Congress was necessary for the consummation. The negotiations had been carried through in such a rapid, secret and "unseemly" manner that few knew what had taken place until after the signing of the treaty, when newspapers friendly to Seward gave to the public news of the purchase. Opposition immediately showed itself in the Senate, not so much because of opposition to the treaty as of personal animosity towards Seward whose name the treaty bore.³³ Many friends of Russia, in and out of Congress, became very active among the Senators and sought to show them the disgrace to the United States and the humiliation to Russia of dishonoring the treaty, for which overtures had originally proceeded from the United States.³⁴ Under the leadership of such men as Sumner and others the Senate was gradually won over, and on April 9, the treaty was ratified by a vote of 37 to 21. In May the treaty was ratified by Russia, and on June 20, 1867, the President of the United States issued the usual proclamation.³⁵ On October 18, 1867, the Russian and United States Commissioners, escorted by a company of infantry, landed at

³² 40th Cong., 2d Sess., H. Ex. Doc. No. 177.

³³ Golder, *op. cit.*, p. 421.

³⁴ Sumner's Speech, *op. cit.*, p. 16.

³⁵ Rept. Com. For. Aff. in House Com. Rept. 40th Cong., 2d Sess., No. 53.

Sitka where the Russian officials formally transferred Alaska to General Rousseau, who had been sent by the President to receive and take charge of it. Thus Russia had discharged all of her obligations under the treaty.³⁶ The treaty making power had done all that it could do, but here was a treaty which required for its consummation the assent of something more than the treaty making power. In the winter of 1868 it became known that an effort was being made in Congress to block the Russian payment. This was done by a group of men who supported the Perkins Claim against Russia. This claim was for arms which were purported to have been furnished by an American, Perkins, and others, to Russia in 1855, and for which remuneration had not been received. Perkins took the matter up at this time but failed to receive any support from the State Department. The agitation was renewed twelve years later by the heirs of Perkins when they learned of the purchase of Alaska, and they enlisted as their supporters certain members of Congress, lawyers, and newspaper editors. The Senate declined to support this claim, whereupon its managers took their fight into the House of Representatives. Their plan seems to have been to block action on the appropriation bill with the hope of forcing Russia to buy them off. There is said to have been an agreement that three-fourths of the \$800,000, which was demanded, should go to the backers of the claim and the other fourth to the Perkins heirs.³⁷ This movement, together with the impeachment trial of President Johnson and the Republican Convention, did block action for some time on the appropriation bill; but finally, on July 14, 1868, Johnson and Seward having withdrawn to the background at the suggestion of Stoeckl, this bill was passed.

It certainly appears that there was corruption on the part of members of Congress and others in connection with the Alaska appropriation bill, but this is difficult to prove. Professor William A. Dunning, in an article published in the

³⁶ Bancroft, *op. cit.*, p. 599.

³⁷ Golder, *op. cit.*, p. 422.

Political Science Quarterly for September, 1912, reproduces a memorandum, written by President Johnson, of a part of a conversation which took place between him and Mr. Seward, in which Mr. Seward told the President that while the appropriation for the payment of Alaska was hung up in the House of Representatives, Stoeckl stated to him that John W. Forney, editor of the *Washington Daily Morning Chronicle*, told the minister that he needed \$30,000 in gold, that there was no chance of the appropriation passing the House unless certain influence was brought to bear in its favor, that accordingly the thirty thousand was paid for the advocacy of the appropriation in the *Chronicle* and, furthermore, that twenty thousand dollars was paid to R. J. Walker and F. P. Stanton for their services as counsel, eight thousand dollars to N. P. Banks, chairman of the committee on foreign relations, and that "the incorruptible Thaddeus Stevens received as his 'sop' the moderate sum of \$10,000." All of these sums, it is indicated in the memorandum, were paid to the respective parties in order to secure the money the Government had promised in the treaty to pay the Russian Government.³⁸

Professor Dunning, commenting on the statements of the Johnson memorandum, says that while the memorandum "does not prove any corruption in the cases of Banks and Stephens," it is difficult to conceive that such statements would have been concocted by Seward or Johnson with no basis of fact, and that the truth of the matter was probably an expression of the joy of Mr. Stoeckl, at the passage of the appropriation bill in the form of "a large excess of pecuniary generosity." "This *ex post facto* project of Stoeckl," writes Professor Dunning, "might easily have taken on in the conversation of September 6, the form and implications that Johnson embodied in the memorandum," and that "if either Banks or Stephens actually received a gift from Stoeckl, the agent through whom it was transmitted was no other than William H. Seward himself."³⁹

³⁸ W. A. Dunning, in "Paying for Alaska," in *Polit. Science Quarterly*, vol. xxvii, p. 386.

³⁹ Dunning, *op. cit.*, p. 398.

Although the purchase money for Alaska was reluctantly voted by Congress, experience has proved that the territory was well worth the sum paid for it, though at first it was believed to be almost valueless. By the opponents of the purchase, Alaska was characterized as a bleak and northern region, its climate frightful, its furs few and its mineral deposits not worth developing. Such statements, however, came only from where there was no vision, for, according to a recent estimate, the territory has yielded, since the purchase, minerals, fish, furs, etc., valued at \$1,164,411,000, that is, Alaska has paid for herself one hundred and sixty times over.⁴⁰

It would appear that the reason why the United States bought Alaska was that she thought it was a good bargain, but uniformity of opinion on this point is lacking. The motives which led the United States to purchase Alaska are thus stated in a report of the committee on foreign affairs, published May 18, 1868:

They were, first, the laudable desire of citizens of the Pacific Coast to share in the prolific fisheries of the oceans, seas, bays and rivers of the western world; the refusal of Russia to renew the charter of the Russian American Fur Company in 1866; the friendship of Russia for the United States; the necessity of preventing the transfer by any possible chance, of the northwest coast of America to an unfriendly power; the creation of new industrial interests on the Pacific necessary to the supremacy of our empire on the sea and land; and finally to facilitate and secure the advantages of an unlimited American commerce with the friendly powers of Japan and China.⁴¹

A recent writer dissents from the above reasons, but states no opinion as to what the real motive of the United States in the purchase was.⁴² Undoubtedly Seward was far more enthusiastic for the purchase than any other American official, and whether the purchase of Alaska was an exemplification of far-sighted statesmanship on his part or only an effort, as Stoeckl thought, to attract public notice to himself,

⁴⁰ E. C. Jameson, *The Golden Northland* (1923), p. 3.

⁴¹ Rept. House Com. on For. Aff., 40th Cong., 2d Sess.; Bancroft, *op. cit.*, p. 595.

⁴² Golder, *op. cit.*, p. 424.

there can be no denial of the fact that the United States lost nothing by the purchase, but that she gained much.

THE TREATY ITSELF

The Treaty begins with the declaration that "the United States of America and his Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them," have appointed plenipotentiaries, who have proceeded to sign articles, wherein it is stipulated on behalf of Russia that "his Majesty the Emperor of all the Russias agrees to cede to the United States by this convention, immediately upon the exchange of ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth,"⁴³ and it is stipulated on behalf of the United States that "in consideration of the cession aforesaid the United States agrees to pay at the Treasury in Washington, within ten months after the ratification, to the diplomatic representative or other agent of his Majesty the Emperor of all the Russias duly authorized to receive the same, \$7,200,000 in gold."⁴⁴ The ratifications were to be exchanged within three months from the date of the treaty, or sooner, if possible.⁴⁵ It will be recalled that in consideration of the \$200,000 added to the purchase price originally agreed upon, the Russian Government formally declared "the cession of territory and dominion to be free and unincumbered by any reservations, privileges, franchises, etc., by any associated companies or by any parties, except merely private individual property-holders."⁴⁶ The treaty further says that "the cession hereby made conveys all the rights, franchises and privileges now belonging to Russia in

⁴³ United States Acts and Treaties Relating to Alaska, 1867-1906, Art. 1, (Charlton Code).

⁴⁴ Ibid., Art. 6.

⁴⁵ Ibid., Art. 7.

⁴⁶ Above, p. 14, n. 32.

the said territory or dominion and appurtenances thereto.”⁴⁷ In brief, Russia conveyed all that she had to convey.

A provision of the Treaty which later gave rise to much controversy is that contained in Art. III, conferring the rights of American citizenship with the exception of uncivilized native tribes, and those Russians, who reserving their natural allegiance, should return to Russia within three years, upon the inhabitants of the ceded territory. These inhabitants, with the exceptions noted, were, by the treaty, “admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States,” and were to be maintained and protected in the free enjoyment of their property, liberty and religion. Under this article of the treaty the uncivilized tribes were to be “subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.”

THE BOUNDARY QUESTION

The boundary of the territory ceded to the United States by the treaty of 1867 was not definitely determined beyond dispute until October, 1903. It was provided in the treaty of cession of 1867 (Art. I) that the eastern boundary of the territory ceded to the United States by Russia should stand as defined in the Anglo-Russian treaty of 1825.⁴⁸ The articles of this treaty defining the Alaskan boundary are as follows:

III. The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the Northwest, shall be drawn in the following manner:

Commencing from the southernmost point of the island called Prince of Wales Island which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and 132d degree of west longitude, the said line shall ascend to the north along the channel called Portland Channel as far as the point of the continent where it strikes the 56th degree of north latitude; from this last-mentioned point, the line of demarcation shall follow the summit of

⁴⁷ U. S. Acts and Treaties Relating to Alaska, Art. 6, (Charlton Code).

⁴⁸ John Bassett Moore, Digest of International Law, vol. i, p. 466.

the mountains situated parallel to the coast, as far as the point of intersection of the 141st degree of west longitude; and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and the British Possessions on the continent of America to the northwest.

IV. With reference to the line of demarcation laid down in the preceding article, it is understood:

First. That the island called Prince of Wales Island shall belong wholly to Russia.

Second. That wherever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British Possessions and the line of the coast (*la lisière de côte*) which is to belong to Russia, as above mentioned, shall be formed by a line parallel to the windings (*sinuosités*) of the coast, and which shall never exceed the distance of ten marine leagues therefrom.⁴⁹

The vagueness of this language gave rise to no difficulty until the discovery of gold in the Klondike district, in Canadian territory, in 1896.⁵⁰ The line established in the above treaty had not been surveyed and marked, and when the Canadian Government in 1898 laid claim to the ports of Dyea and Shagnoey on Lynn Canal, a controversy arose as to where the line should run,⁵¹ as to the section from 54 degrees 40 minutes to Mt. St. Elias. The questions involved in this dispute were referred to the Anglo-American joint high commission of 1898, which met at Quebec for the purpose of considering and adjusting American-Canadian questions with reference to commercial reciprocity and fisheries.⁵² The refusal of the American members to accept arbitration of the boundary dispute, after the fashion of the then recent Venezuelan boundary dispute, terminated the negotiations of the commission before it had reached an agreement with reference to any of the questions before it.⁵³

In these negotiations Great Britain, adopting the novel

⁴⁹ Ibid.

⁵⁰ *Cyclopedia of American Government*, vol. i, p. 27.

⁵¹ Moore, *op. cit.*, vol. i, p. 467.

⁵² John H. Latané, *America as a World Power* (*Amer. Nation*), vol. xxv, p. 193.

⁵³ John S. Ewart, *Alaska Boundary and Other Essays*, p. 301.

Canadian interpretation of the treaty of 1825, contended that the line defined as running ten leagues parallel with the sinuosities of the coast or heads of tide-water inlets should run parallel to the coast itself, thus giving to Canada a considerable strip or territory on tidewater, including a number of islands, in whole or in part.⁵⁴

The claim of the United States was: (1) that the convention of 1825 confirmed in full sovereignty to Russia a continuous strip of territory along the continental shore from Portland Canal to Mount St. Elias; (2) that it was the intention of the parties to this treaty that the width of such strip was to be ten marine leagues measured from the heads of all gulfs, bays, inlets, and arms of the sea—that is from tide-water—unless within that distance from tide-water there was a range of mountains lying parallel to the sinuosities of the coast, in which case the summit of such range was to form the boundary; (3) that the acts of Great Britain subsequent to the signature of this treaty, and the universal interpretation given it by governments, geographers, cartographers, and historians, agreed with and confirmed the intention and meaning above stated; (4) that the United States purchased Alaska, entered into possession of and occupied the *lisière* as above described, and exercised sovereign rights therein, and treated the same at all times as a part of its national domain, and remained in possession for thirty years without any notice from Great Britain that she claimed any portion of the territory ceded by Russia; (5) that since there was no continuous range of mountains between Portland Canal and Mount St. Elias parallel with the sinuosities of the coast, the width of the *lisière* above described was not limited by a boundary line along the summit of such supposed range, but solely by the agreed distance of ten marine leagues from tide-water.⁵⁵

With the failure of the negotiations of 1898, the Alaska boundary went back to the two interested governments, and

⁵⁴ Moore, *op. cit.*, vol. i, p. 467; cf. Alaska Boundary Tribunal, Proceedings, vol. iii, pp. 73-78.

⁵⁵ Alaska Boundary Tribunal, Proceedings, vol. i, part 2, pp. 102-103.

dilatory negotiations followed until October, 1903. The conflicting claims of jurisdiction on the headwaters of Lynn Canal, however, became so serious⁵⁶ that the United States, through Secretary of State Hay, agreed upon a conditional boundary with the British Chargé at Washington by means of notes exchanged on October 20, 1899.⁵⁷ The boundary line established by this *modus vivendi* about the head of Lynn Canal gave Canada possession of places which had been usually claimed within American jurisdiction. It was specifically provided, however, that this provisional line was fixed "without prejudice to the claim of either party in the permanent adjustment of the international boundary."⁵⁸

Finally, after some more or less fruitless negotiation, Mr. Hay, on January 24, 1903, signed a convention with Sir Michael Herbert, in which it was agreed to submit the question to an arbitral tribunal consisting of three American and three British members. The meetings of this tribunal took place in the London Foreign Office, beginning on September 3, 1903.⁵⁹ The American members were Elihu Root, then Secretary of War; Senator Henry Cabot Lodge, of Massachusetts; and ex-Senator George Turner, of Washington. The British members were Lord Alverstone, chief-justice of England; Sir Louis A. Jette, lieutenant-governor of the Province of Quebec; and Mr. Allen B. Aylesworth, of Toronto.⁶⁰

The decision of this tribunal was rendered on October 20, 1903, and for the most part the American claim was sustained by a four to two vote, Lord Alverstone voting with the three American members. The majority of the tribunal held that it was the intention of the treaty of 1825 to bar England from access to the tide-water through the *lisière*. A concession was made to the British claim, however, in awarding to Eng-

⁵⁶ Latané, *op. cit.*, p. 194.

⁵⁷ Moore, *op. cit.*, vol. i, p. 468.

⁵⁸ *Ibid.*

⁵⁹ Alaska Boundary Tribunal, Proceedings, vol. i, part 1, p. 15.

⁶⁰ *Ibid.*, p. 15.

land the islands of Wales and Pearse, at the entrance of Portland Channel.⁶¹

The western boundary of Alaska as defined in the treaty of cession (Art. I), starts at "a point in Bering's Straits on the parallel of $65^{\circ} 30'$ north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern or Ignalook and the island of Ratmanoff or Noonarbook," and from this point "proceeds due north, without limitation," into the "Frozen Ocean." The line in its downward course, "beginning at the same initial point, proceeds thence in a course nearly southwest through Bering's Straits and Bering's Sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Chowkotski to the meridian of one hundred and seventy-two west longitude; thence from the intersection of that meridian in a southwesterly direction, so as to pass midway between the island of Alton and the Copper Island of the Karmandorski couplet or group, in the North Pacific Ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian Islands east of that meridian."⁶²

⁶¹ Ibid., pp. 29-32.

⁶² Moore, *op. cit.*, vol. i, p. 475.

CHAPTER II

THE CONSTITUTIONAL STATUS OF ALASKA

From 1867 to 1884, during which period Alaska had not even the shadow of civil government, she was nothing more than "a geographical subdivision" of the United States or "a mere piece of property of the United States."¹ During these seventeen years her inhabitants were, for the most part, left to shift for themselves. By the so-called organic Act of 1884 Alaska was constituted "a civil and judicial district."² The "district of Alaska" remained the official designation of these possessions until 1905,³ and in the meantime there was considerable doubt and discussion as to whether Alaska was a territory or a district. To those who would make this strict, technical distinction, the term "district" is applied to any part of the public domain whose inhabitants are deemed to be incapable of exercising the right of self-government, and to which representative institutions have not been granted and which it is not intended shall be incorporated as a state into the Union. The term "territory," on the other hand, implies a certain measure of local self-government exercised through a locally elected legislature.⁴

It is very difficult to draw a hard and fast distinction between these two terms. On this point there seems to have been little clear thinking even on the part of Congress. In 1868 Congress in extending the customs laws to Alaska used the term "*district* of Alaska." Yet in this same act and in most of its early acts concerning Alaska Congress called it the "*territory* of Alaska."⁵ In the civil code of June 6,

¹ Cong. Record, p. 2344, 47th Cong., 1st Sess.

² U. S. Stat. L., vol. 23, ch. 53, sec. 1.

³ See *Rasmussen vs. U. S.*, 197 U. S. 516.

⁴ Max Farrand, "Territory and District," in *Amer. Hist. Rev.*, vol. v, pp. 676-681.

⁵ Rev. Stat. 1873-1874, secs. 2591-2593, p. 572.

1900, Congress repeated the designation of "district," but it appears that this term was used with special application to the judicial system provided for this possession. In 1906 the United States Supreme Court, in the case of *Rasmussen vs. United States* (197 U. S. 516), decided that Alaska was incorporated as a part of the United States, and referred to it as an incorporated territory. Congress in the Act of May 7, 1906, declared "That the people of the *Territory of Alaska* shall be represented by a Delegate in the House of Representatives of the United States"; but it is further declared in the same law that the delegate "shall be an inhabitant and qualified voter of the *district of Alaska*."⁶ In still later laws Congress refers to Alaska as a district, and it was not until the organic Act of August 24, 1912, that that body expressly and definitely constituted Alaska the *Territory of Alaska*—thereby settling the question, whether Alaska is a district or a territory.

Such distinction, however, seems useless, for, on the authority of the United States Supreme Court, it is the complete subjection of any political unit to the federal government of the United States that makes the subdivision a territory.⁷ More useful distinctions would seem to be that between an "incorporated" and "unincorporated" territory, and that between an "organized" and "unorganized" territory. It is on the basis of these distinctions that we shall endeavor to determine the present constitutional and political status of Alaska.

But before entering into the discussion of these questions, it might be well to point out briefly the power of the Congress over the territories of the United States and the source of this power. For it is the Congress that incorporates territories and determines whether they shall be "organized" or "unorganized." The power of the Federal Government over the government of the territories subject to its sovereignty

⁶ U. S. Comp. Stat. 1918, p. 523.

⁷ *Binns vs. United States*, 194 U. S. 486; also *The Coquitlam vs. United States*, 163 U. S. 346.

and not included within any of the states of the Union may be said to be derived from two sources: first, from the express constitutional power given to Congress "to dispose of and make all needful rules and regulations respecting the territory or other property of the United States,"⁸ and second, by implication, from the right to acquire territory. In the case of *Sere vs. Pitot* (6 Cr., 332), decided in 1810, it was declared by Chief Justice Marshall that "the power of governing and of legislating for a territory is the inevitable consequence of the right to acquire and to hold territory," and in *De Lima vs. Bidwell* (182 U. S., 1), the court said that the power to govern territories "is an authority which arises, not necessarily from the territorial clause of the Constitution, but from the necessities of the case, and from the inability of the states to act upon the subject."

Not only is there no doubt as to the existence of this power of the general government to govern all territories subject to its jurisdiction, but this power has been held to be well nigh, if not wholly, absolute. The form of government which shall be provided for these territories and the measure of participation therein to be accorded their inhabitants, is a matter which lies entirely within the discretion of the President and the national legislature.⁹ In the case of *Murphy vs. Ramsay* (114 U. S. 15), the court declared: "The people of the United States, as sovereign owners of the national territories, have supreme power over them and their inhabitants," and that "in ordaining government for the territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends, beyond all controversy, to determining by law, from time to time, the form of the local government in a particular territory, and the qualifications of those who shall administer it." Thus we see that Congress in the govern-

⁸ U. S. Constitution, Art. iv, Sec. 3.

⁹ See *Mormon Church vs. United States*, 136 U. S. 1; *National Bank vs. County of Yankton*, 101 U. S. 129; *Nelson vs. United States* (C. C.), 30 Fed. 112.

ment of the territories has plenary power, save as controlled by the prohibitory provisions of the Constitution. The form of government it shall establish in them is not prescribed but may assume any form that Congress deems suitable. Indeed Congress may legislate directly in respect to the local affairs of a territory, or transfer the power of such legislation to a locally elected body.¹⁰

It might well be asked at this point, to what extent is Congress, in legislating for the territories, subject to the limitations of the Constitution of the United States which apply to that body when passing laws for the United States considered as a political body of states in union? The answer to this question, according to the decisions of the United States Supreme Court, must depend upon the relation of the particular territory to the United States, concerning which Congress is exercising the power conferred by the Constitution.¹¹ This leads to a consideration of the constitutional position of Alaska, arising out of the judicial distinction between an "incorporated" territory and one "not incorporated." This distinction was made by the Supreme Court at the beginning of the present century on account of the new and peculiar problems connected with the territory which the Spanish-American War brought under our control. In a series of cases beginning in 1900, known as the Insular cases, the court evolved a distinction between territory "incorporated" in the United States and territory "not incorporated," and held that Congress in legislating for the incorporated territories was bound by all the limitations in the Constitution which were not locally inapplicable. In legislating for the "unincorporated" territories, that is, Hawaii, Porto Rico, and the Philippines, the court held that Congress was not bound by all the limitations of the Constitution applicable to the incorporated territories but only by the "fundamental" parts of the Constitution. These latter territories were regarded by the court as belonging to the United

¹⁰ *Binns vs. United States*, 194 U. S. 486.

¹¹ *Dorr vs. United States*, 195 U. S. 138.

States rather than to any foreign power; as appurtenant to, and dependencies of, the United States, but not a part thereof in the sense in which the incorporated territories were; and consequently the "formal" portions of the Constitution apply to them only when Congress expressly so directs. The Court has never made a complete classification of the fundamental and formal parts of the Constitution but has reserved the right to determine this question specifically as cases arise.

According to this distinction Alaska is at present our only "incorporated" territory.¹² As to the time at which this territory became "incorporated" it is not easy to say. As to the method by which it became incorporated, however, there is not so much uncertainty. There have been repeated decisions of the courts to the effect that the treaty making power alone cannot incorporate territory into the United States; that such action on the part of the treaty making power serves only to create an obligation on the part of the United States which the Congress may or may not recognize; that to the action taken by the treaty making authority there must be congressional assent which may be either expressed or implied in the form of a non-repudiation of the treaty and subsequent legislation relative to the administration of the acquired territory.

The first judicial reference to the "incorporated" status of Alaska is to be found in the case of *Downes vs. Bidwell* (182 U. S. 244), one of the Insular Cases, in which the question to be adjudicated was, whether the revenue clauses of the Constitution of the United States extended of their own force, that is, without congressional action, to the Island of Porto Rico. Mr. Justice Gray in his concurring opinion says: "The cases now before the court do not touch the authority of the United States over the territories in the strict and technical sense, being those which lie within the United States, as bounded by the Atlantic and Pacific Oceans,

¹² With the possible exception of Hawaii.

the Dominion of Canada and the Republic of Mexico, and the Territories of *Alaska* and Hawaii; but they relate to territory in the broader sense, acquired by the United States by war with a foreign State." This, however, is only an indirect reference and cannot be taken as establishing the fact that Alaska was at that time (1901) an incorporated territory.

As to the competence of the treaty-making power to incorporate territory, the court said in this case "that the treaty-making power was always deemed to be devoid of authority to incorporate territory into the United States without the assent, expressed or implied, of Congress, and that no question to the contrary has ever been even mooted."

In the case of *Dorr vs. United States*, (195 U. S. 138), in which the issue was whether Congress in the government of ceded territories is required by the Constitution to enact for such territories, not made a part of the United States by congressional action, a system of laws including the right of trial by jury, the Supreme Court, speaking through Justice Day declared "that the Constitution does not, without legislation and of its own force, carry such right to territory so situated." Applying the doctrine laid down in *Downes vs. Bidwell*, the court further stated: "That the United States may have territory which is not incorporated into the United States as a body politic, we think was recognized by the framers of the constitution in enacting the article already considered, giving power over the territories," and that, "Until Congress shall see fit to incorporate territory ceded by treaty into the United States, we regard it as settled by that decision (*Downes vs. Bidwell*) that the territory is to be governed under the power existing in Congress to make laws for such territories and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation."

Thus it was decided in these cases that ceded territory is of two kinds, that which is incorporated into the United States and that which is not. Alaska, it will now be seen, belongs in the former class of territories. In 1905 the Su-

preme Court of the United States in the case of *Rasmussen vs. United States* (197 U. S. 516)—see also *Carlson vs. Sullivan*, 146 Fed. Rep. 476 (1906)—definitely and finally decided that Alaska was an incorporated territory. The question in this case was whether or not an inhabitant of Alaska charged with the commission of a crime under the penal code of Alaska was entitled under the Constitution to a common law jury instead of a jury of six as provided by Congress in the Act of June 10, 1900, providing for a jury of only six in trials for misdemeanors.¹³ Applying the principle of incorporation laid down in *Downes vs. Bidwell*, and *Door vs. United States*, the Court, speaking through Justice White, held in this case that Alaska was so incorporated into the United States by the treaty of 1867 and by such subsequent legislation as the act of July 20, 1868, concerning internal revenue taxation,¹⁴ and the act of July 27, 1868, extending the laws of the United States relating to customs, commerce and navigation over Alaska and establishing a collection district therein,¹⁵ as to render repugnant to the sixth amendment of the Constitution the provision of the act making six jurors a legal jury in trials for misdemeanors in Alaska. Citing a number of prior cases, the Court said further:

Without attempting to examine in detail the opinions in the various cases, in our judgment it clearly results from them that they substantially rested upon the proposition that where territory *was a part* of the United States, the inhabitants thereof were entitled to the guaranties of the 5th, 6th and 7th amendments, and that the act or acts of Congress purporting to extend the Constitution were considered as declaratory merely of a result which existed independently by the inherent operation of the Constitution.

That is to say, once the territory is incorporated into the United States and becomes a part thereof, Congress in legislating for such territory is, without further action on its own part, bound by all the limitations of the Constitution that are applicable in said territory. Indeed it was declared

¹³ 31 Stat. L. 358, ch. 786.

¹⁴ 15 Stat. L. 167, ch. 186, sec. 107.

¹⁵ 15 Stat. L. 240, ch. 273.

in *Downes vs. Bidwell* that "where the Constitution has been once formally extended by Congress to territories, neither Congress nor the territorial legislature can enact laws inconsistent therewith."¹⁶ It is not to be concluded from this statement that Congress is not at full liberty to revoke any specific action that it may take with reference to a territory, but that once congressional action has served to incorporate a territory into the United States, Congress cannot then by any specific act render such a territory "unincorporated" so as to free itself from the limitations of the Constitution that are applicable in the territory.

In the case of *In re Naturalization of John Minook* (1904) (2 Alaska 200), Judge Wickersham took the same position as set forth in the decisions discussed above with regard to the method by which Alaska was incorporated; namely, that the treaty-making power of the United States cannot incorporate territory without the consent of both houses of the Congress, that the treaty with Russia for the cession of Alaska created a contract on the part of the United States to accept the grant, to pay the consideration, and to incorporate the inhabitants thereof, excepting the uncivilized tribes, into the body of the citizens of the United States upon the terms specified, but it was not self-executing and depended for its complete ratification and final execution upon the assent of Congress; that the treaty could neither appropriate the money necessary to pay Russia nor incorporate the inhabitants of the ceded territory into the citizen body of the United States; that only Congress had that power and it might refuse to do either or both; and that although Congress did not specifically assent to the treaty stipulations as regards incorporation of the inhabitants of Alaska, with the exception of uncivilized tribes, it did give such assent by way of implication in the extension of certain laws of the United States to the territory and the passage of the organic act of 1884 providing a partial civil government.¹⁷

¹⁶ *Downes vs. Bidwell*, 182 U. S. 244.

¹⁷ *In re Naturalization of John Minook*, 2 Alaska 200.

From the above discussion we may then conclude that the relation of Alaska to the United States is that of an incorporated Territory, that such incorporation came about as the result of the Treaty of 1867 plus subsequent legislation on the part of Congress impliedly assenting to the terms of the treaty, that, as an incorporated territory, it is entitled to the protection of the United States Constitution and all general laws passed in pursuance thereof except such as are locally inapplicable. In this connection it might be well to state that Congress in the Organic Act of 1912 expressly provided that "the Constitution of the United States, and all the laws thereof which are not locally inapplicable, shall have the same force and effect within the said territory as elsewhere in the United States." This provision, however, according to the opinion of the Supreme Court in *Rasmussen vs. United States*, is to be regarded merely as a legislative declaration of a result already achieved by the former incorporation of the Territory in the manner outlined in this paper.

Alaska is at present not only an incorporated territory but is also an organized territory, that is, it has an organized government of its own with a local legislature. It may be well to point out that the possession of a local legislature is the essential element of an organized territory as that term is used in this paper. Thus Alaska was an incorporated territory long before it became organized in the complete sense of the word. It was not until August 24, 1912, through the Organic Act of that date, that Congress granted to Alaska a local legislature whose power was made to extend "to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States."¹⁸ It is true that the act of 1884 constituted Alaska "a civil and judicial district" and provided for a territorial governor, that in 1889 and 1900 she was provided with a penal and civil code respectively, and that in 1906 she was granted a delegate

¹⁸ U. S. Comp. Stat. (1918), p. 521.

to the House of Representatives of the United States, but this legislation cannot be said to have given Alaska a completely organized status in the sense in which the term is here used.

Just what constitutes an organized territory is well stated in the case of *In Re Lane* (135 U. S. 443), in which the accused was charged with the commission of an offense "within that part of the Indian territory commonly known as Oklahoma." The defendant was tried and convicted upon an indictment, found under an act which excepted the "territories" from its operation; and it was claimed by the defense that Oklahoma, which then constituted a part of the Indian territory, was a territory within the meaning of the statute involved, and therefore, came within its exemption. The Court, however, held that the words "except the territories" in the Act had "reference exclusively to that system of organized government, long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, a *legislative* and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by act of Congress, and their legislative acts are subject to the disapproval of the Congress of the United States. They are not, in any sense, independent governments—yet they exercise nearly all the powers of government under what are generally called organic acts, passed by Congress conferring such powers on them." The court said further: "Oklahoma was not of this class of territories. *It had no legislative body.*"¹⁹

In the case of *American Railroad Company of Porto Rico vs. Didrickson*, 227 U. S. 145, in which the question was whether the safety-appliance Act of March 2, 1903 (U. S. Comp. Stat. Supp. 1911, p. 1314), which provides that the former acts of which it is amendatory shall be held to apply to "common carriers by railroad in the territories and the

¹⁹ See also *Porto Rico vs. Rosaly*, 227 U. S. 270, and *American Railroad Co. vs. Didricksen*, 227 U. S. 145.

district of Columbia," is in force in Porto Rico where the Foraker Act of April 12, 1900 (31 Stat. L. 80 ch. 191) provides that "the statute laws of the United States not locally inapplicable," except the internal revenue laws, have the same force and effect as in the United States. The court in holding that the Safety-Appliance Act did apply to Porto Rico, used the following language: "Though for all purposes the Island of Porto Rico has not been fully incorporated into the United States, it obviously is not foreign territory, nor its citizens aliens. Its organization is in most essentials that of those political entities known as territories. *It has a territorial legislature* and a territorial system of courts." In *New York vs. Bingham*, 211 U. S. 468, in which Porto Rico was held to be an organized territory within the meaning of section 5278, Revised Statutes, providing for the surrender of fugitive criminals by governors of territories or states,²⁰ the court said: "It may be justly asserted that Porto Rico is a completely organized territory, although not a territory incorporated into the United States."

Applying the criteria set forth in these cases to Alaska, we find that it became an organized territory through the organic act of 1912 providing a territorial legislature, and that prior to this act it was an unorganized territory, or at most only partially organized. It is to be noted also that its "organization" and "incorporation" were entirely independent of each other, for as we have seen Alaska was judicially recognized as an "incorporated" territory long prior to the time of its organization. Thus, as is indicated in the above cases, an incorporated territory need not be organized, nor need an organized territory be incorporated. The two distinctions are widely different in that one has an important constitutional significance, and the other only an administrative and political significance. That is to say, the Constitution of the United States, except where locally inapplicable, applies to an incorporated territory though not

²⁰ U. S. Comp. Stat. 1901, p. 3597.

organized of its own force and without any action on the part of Congress, whereas to an organized territory not incorporated the Constitution, except in the case of the "natural" rights to life, liberty, property, etc., does not apply except when made to do so by the express action of Congress.

It is only fair to state, however, that the case of *Binns vs. United States*, 194 U. S. 486, decided in 1904, declares that Alaska was at that time "an organized territory" and seems to impute a constitutional significance to such alleged organization. The court bases this position upon the fact that in the so called organic act of May 17, 1884 (23 Stat. at L. 24 ch. 53), entitled "An Act Providing a Civil Government for Alaska," it is provided "That the territory ceded to the United States by Russia by the treaty of March 30, 1867, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be *organized* and administered as hereinafter provided." Incidentally, it would seem that the Court here imputes an undue virtue to a mere word, for an examination of the Act referred to will show that only the shadow of an organization was provided. Either this statement of the Court imputes a constitutional significance to the term "organized," or else it is to be regarded as a mere dictum, for the question at issue was whether a provision of the penal code of Alaska imposing certain license taxes was repugnant to the clause of the Constitution requiring uniformity throughout the United States, as the licenses complained of were imposed only in Alaska. The Court, after referring to the statements concerning Alaska contained in the concurring opinions in *Downes vs. Bidwell*, declared it to be settled that Alaska had undoubtedly been incorporated into the United States, and hence conceded that the license complained of was invalid, if levied by Congress under the general grant in the Constitution of the power of taxation. The legislation in question, however, was upheld on the exceptional ground that Congress had therein exercised its authority merely as a local legislature for Alaska. This would seem to indicate that the statement relative to

the organized status of Alaska is to be regarded as a mere dictum, in which event it should not be considered as controlling. If, however, this statement was meant to impute a constitutional significance to the term "organized territory," it then cannot be regarded in any other manner than as an unfortunate introduction by the Supreme Court of an unnecessary element of confusion into the already too difficult problem of determining the constitutional status of Territories of the United States. For, however vague and unsatisfactory the doctrine of incorporation may be considered to be, it was laid down by the Supreme Court in 1901 and has been accepted as a controlling principle in the determination of the applicability of the Constitution to our dependencies. It would seem then that the Court in *Binns vs. United States* would have done well to omit all reference to organization of Alaska and to decide the issue purely on the principle of incorporation.

In this connection it should be noted that in the *Rasmussen* case, decided subsequently to *Binns vs. United States*, the effort had been made to maintain the doctrine that even if Alaska were incorporated it had not been "organized," and therefore, was not entitled to the right of a common law jury. This contention the Court held to be unsound. Incorporation and not organization was declared to be the test of the general applicability of the Constitution. The conclusion to be drawn from this decision is that Alaska in 1905 was not organized and that even if it had been no constitutional significance would have attached to such organization.

CHAPTER III

CIVIL AND POLITICAL RIGHTS OF INHABITANTS

It having been found in the preceding chapter that Alaska is an "incorporated" and "organized" Territory, the effect of such a status upon the civil and political rights of its inhabitants may now be considered. The third article of the treaty ceding Alaska to the United States provides that:

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of the uncivilized tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of the citizens of the United States, and shall be maintained and protected in the full enjoyment of their liberty, property and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country.¹

It is seen that this treaty divided the inhabitants of Alaska into three classes: first, those, who, reserving their natural allegiance, should return to Russia within three years after the date of the treaty; second, those who remained in the Territory, excepting the uncivilized tribes; and third, the uncivilized tribes. With the first class we are not here concerned. It cannot be said that merely by the above quoted provision of the treaty, the second class of inhabitants were collectively naturalized; for, as has been already pointed out, the express or implied assent of Congress is necessary to the incorporation of the inhabitants of ceded territory into the citizen body of the United States.² That such assent was given, however, has also been pointed out. Thus we see that the treaty of cession, which received the implied approval of Congress, made perfectly clear reservations of the rights of citizenship to certain inhabitants of Alaska included in the

¹ U. S. Acts and Treaties Relating to Alaska, Art. 3 (Charlton Code).

² United States vs. British Schooners, 5 Alaska 11.

second class mentioned above; that is, the inhabitants of Alaska belonging in this class are entitled to "all the rights, advantages and immunities of the citizens of the United States" and to protection "in the full enjoyment of their liberty, property and religion." In short, being incorporated into the citizen body of the United States, they are entitled to the full guaranties of the Constitution regarding civil rights. In other words, they are citizens of the United States and are entitled as such to all the rights and privileges necessary to such a status. These reservations of the privileges and immunities of citizenship are as complete and perfect guaranties as could be afforded, but it was not easy to determine who was to be excepted from these guaranties. The attempt to classify into civilized and uncivilized involves tremendous difficulties. Just what constitutes civilization within the meaning of the laws of the United States is not easy to determine, and it is owing chiefly to this fact that the legal status of the natives of Alaska has been a matter of so much doubt and uncertainty.

The best light that the writer has been able to find on this question—and this is by no means definite—is the discussion by Judge Wickersham in the case of *In Re Naturalization of John Minook* (2 Alaska Rep. 200). Minook, the son of a Russian father and an Eskimo mother, applied for naturalization papers on the ground that he was a Russian subject. In regard to his status the Court said: "The United States and Russia are civilized nations, and every person being a citizen of either, although individually lacking in education or other civilized standards, is a civilized person. We do not recognize a legal difference between members of the same nation based on standards of culture. While one may stand at the bottom and another at the top, if they belong to the same race or nation, they are classed together." The Court then attempted to determine who were excluded from the naturalization benefits of the third article of the treaty of cession by an investigation of the question as to who were subjects of Russia in Alaska at the time of the

cession. Upon this point the Court pointed out that in 1841 the Emperor of Russia granted to the existing Russian American Company privileges extending over a further period of twenty years, with provisions for the establishment of a new charter for the government of the colonies; that in 1844 an imperial ukase was signed, promulgating this charter, which, among other provisions, fixed the status of the people of Alaska, both Russian and native, in respect to the Russian nation. This imperial law, it appears, recognized the Russian colonists in Alaska, their creole children, and those settled tribes who embraced the Christian faith, as Russian subjects. Those tribes not wholly dependent—"the independent tribes of pagan faith who acknowledged no restraint from the Russians, and practiced their ancient customs"—were classed as uncivilized native tribes by the Russian laws, which laws and social conditions, as the Court pointed out, continued to exist at the date of the treaty of cession in 1867. The Court held, therefore, that "it was these people (Russian colonists, creoles, and settled tribes, members of her national church) whom Russia engaged the United States to admit as citizens, and to maintain and protect 'in the full enjoyment of their liberty, property and religion,'" that these people "were civilized people at the date of the treaty of cession to the United States, and upon accepting its provisions became, *ipso facto*, citizens of the United States," and that the applicant was of this stock, being "the son of a Russian trader and an Eskimo mother, all of whom were members of the Greek Church and subjects of Russia at the date of the treaty." The Court went further and argued that if Minook were not a citizen on this ground, then he was a citizen, even if he be regarded as a member of an uncivilized native tribe, by virtue of his having, since the date of the treaty of cession, voluntarily taken up his residence separate and apart from any tribe of Indians therein (Alaska), and of having "adopted the habits of civilized life." Since he was held to be such a citizen at the time of his application, the same was denied.

The District Court bases this latter argument upon an Act of February 8, 1887, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians and for other purposes" which provides in section 6 that "every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this Act, or under any law or treaty, *and every Indian born within the territorial limits of the United States, who has voluntarily taken up within said limits, his residence separate and apart from any tribe of Indians therein and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States.*"³

The applicant in this case was not born within the territorial limits of the United States, but the Court holds "he is nevertheless entitled to the benefits of the naturalization clause in this section by virtue of the treaty promise, approved by Congress, that he shall be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country."⁴ According then to this decision, not only are the former Russian subjects who remained in Alaska after the treaty of 1867 naturalized citizens of the United States, but also members of the "uncivilized tribes," mentioned in the third article of the treaty who have voluntarily taken up their residence separate and apart from any tribe of Indians and have adopted the habits of civilized life. It is interesting to note in connection with this latter point, that in the debate upon the Civil Rights Bill, 1866, the idea is clearly presented that the Indian, when he has cast off his wild habits and submitted to the laws of organized society, becomes a citizen, and that the bill, if passed, would protect him in civil rights.⁵ Judge Cooley, commenting on citizenship conferred by the

³ 24 Stat. L. 388, ch. 119.

⁴ See also *United States vs. Berriman*, 2 Alaska 442.

⁵ Cong. Globe, p. 527, 39th Cong., 1st Sess.

fourteenth amendment of the Constitution, declares that the position of the aboriginal inhabitants of the country is wholly altered when they dissolve their tribal relations, and no longer recognize its authority, and the individual makes himself a member of the civilized community, and that under the terms of the amendment, "his right to protection in person, property and privilege must be as complete as the allegiance to the Government to which he must then be held; as complete, in short, as that of any other native born inhabitant."⁶

But what is the status of those "uncivilized native tribes" in Alaska who have not conformed to the above conditions? In the first place it may be stated that they cannot be considered dependent or domestic nations, for the United States has never recognized any tribal relations among those natives and has never in any way treated with them. The courts have repeatedly decided that Alaska is not Indian country; that the courts of the United States have jurisdiction to try the Indians of this territory according to the laws of the United States, and that their local rules and customs must not prevail.⁷ The courts have usually regarded these natives of Alaska as dependent subjects of the United States, or wards of the Government. In the case of *In re Sah Quah*, the court said: "The Alaskan Indians while not citizens within the full meaning of the term, are dependent subjects, amenable to the penal laws of the United States, and subject to the jurisdiction of its courts." Commenting further upon their status, the Court said: "I am inclined to the opinion that their system is essentially patriarchal and not tribal, as we understand that term in its application to other Indians. They are practically in a state of pupilage, and sustain a relation to the United States similar to that of a ward

⁶ 2 Story's Constitution, Cooley's ed., sec. 1933, p. 654.

⁷ *Kie vs. United States*, 11 Sawy. 579; *In re Carr*, 3 Sawy. 317; *Waters vs. Campbell*, 4 Sawy. 121; *United States vs. Stephens*, 12 Fed. Rep. 52; *In re Sah Quah*, 31 Fed. 327; *United States vs. Saveloff*, 2 Sawy. 311.

to a guardian.”⁸ It should be suggested that the above is about as definite a judicial statement that has been made regarding the legal status of the Alaskan natives. Yet in spite of this obvious doubt and uncertainty as to the status of these natives, with ill consequences to them, Congress did not see fit to settle this important question by legislative enactment; so that it was not until 1915, and then by the Territorial Legislature under authority conferred by the Organic Act of 1912, that any legislation providing a plan for the admission of the Alaskan natives to citizenship was passed.

This neglectful attitude on the part of Congress had the effect of subjecting the Alaskan natives to great economic, as well as political and legal, disabilities, and was consequently a retarding influence upon the development of the Territory. Before the end of the nineteenth century the native people of Alaska were ready to abandon their old customs and ideas and to take up American customs and ways of living, and were asking what rights they had as individuals. They wanted to know whether they could take up land, own mines, operate steamships as pilots, captains and engineers. To these and other services they were frequently denied access simply on the ground that they were unable to prove their citizenship.⁹ One instance of this unfortunate situation was seen in the case of members of a native tribe in Alaska who, after constructing an ocean-going fishing vessel and equipping it with necessary machinery, were not permitted to operate the vessel on the ground that they were not citizens, and had to have a white man with a license to operate the engine.¹⁰ It would seem that the simplest and the only just way for the solution of this problem was for Congress to declare these natives citizens, at the same time placing proper safe-guards around the ballot box. A sweep-

⁸ United States vs. Cadzow et al., 5 Alaska 125.

⁹ Report of Governor, 1898, House Ex. Doc., vol. xvi, p. 221, 59th Cong., 3rd Sess.

¹⁰ Hearings, House Com. on Territories, on H. R. 5694, p. 200, 67th Cong., 1st Sess.

ing grant of the electoral franchise to these natives would of course be unwise and doubtless disastrous,¹¹ but, inasmuch as political power can be conferred on the inhabitants of Territories only by Congress, as we shall see in a moment, this contingency could have easily been avoided.

Yet Congress has never seen fit to define by legislative enactment the legal status of the "uncivilized tribes" of Alaska, but so great was the advancement in the civilization and patriotism of the natives, particularly in Southeastern Alaska, that the Alaska Territorial Legislature at its second regular session in 1915, acting under authority conferred by Congress in the Organic Act of 1912, passed a law permitting the Alaska natives to become citizens under the following conditions: The native Indian shall first make application to a United States Government, Territorial or municipal school, and shall be subjected to an examination by a majority of the teachers of such school as to his or her qualifications and claims for citizenship—the examination to show that the applicant is capable of an intelligent exercise of the obligations of suffrage, a complete dissolution of any tribal customs or relationship, and the adoption of the habits of a civilized life. Having obtained a certificate setting forth the above facts, the applicant shall thereupon obtain an indorsement of said certificate by at least five white citizens of the United States who have been residents of Alaska for one year to the effect that said applicant has abandoned tribal customs and relationship, has adopted the habits of a civilized life and is qualified to exercise the rights, privileges and obligations of citizenship. The certificate thus properly indorsed, together with an oath duly acknowledged to the effect that he forever renounces all tribal customs and relationship, shall be forwarded by the applicant to the United States District Court for the division in which the applicant resides asking for the granting of a certificate of citizenship. The Judge of the District Court upon receiving the application shall set a day

¹¹ Report of Governor, 1891, H. Ex. Doc., vol. xvi, p. 500, 52d Cong., 1st Sess.

of hearing thereon which shall not be less than sixty days from the date of receipt, and upon approval of such application, the judge of the District Court shall issue a certificate of citizenship, which when presented in court or otherwise shall be taken as *prima facie* evidence of the truth of the statements contained in it.¹² These requirements, it will be noted, are very strict, but they were made so at the request of the natives themselves "who desired their citizenship to mean something more than mere form, and that only those who are qualified should become citizens."¹³

As to the political rights of the natives of Alaska, such as the right to local government, the right to vote and to be voted for, these are dependent absolutely upon the discretion of Congress irrespective of whether or not the natives are recognized as citizens of the United States.¹⁴ The United States Supreme Court, in the case of *Murphy vs. Ramsay* (114 U. S. 15), declared that "in ordaining government for the territories, and the people who inhabit them, all the discretion which belongs to legislative power is vested in Congress; and that extends, beyond all controversy, to determining by law, from time to time, the form of the local government in a particular Territory, and the qualifications of those who shall administer it." The political rights, as the right to vote and to hold office, are not rights pertaining to citizenship of the United States,¹⁵ and therefore such rights may be prescribed by Congress for a territory under its constitutional authority to provide for the government of territories belonging to the United States.

Under this authority Alaska has, until recently, fared badly at the hands of Congress—but of this more will be learned in another connection. Through more recent legislation Alaska has been given a Delegate in the House of Representatives of the United States¹⁶ to be elected "by the people"

¹² 1915 Session laws, chap. xxiv, also Annual Reports Dept. of Interior, 1915, vol. ii, p. 548.

¹³ Above, p. 43.

¹⁴ 38 Cyc. 196.

¹⁵ *Pope vs. Williams*, 193 U. S. 632.

¹⁶ U. S. Comp. Stat., Supp. 1918, p. 523.

of the Territory, and a Territorial Legislature whose legislative power "shall extend to all rightful subjects of legislation not inconsistent with the constitution and laws of the United States."¹⁷ All citizens of the United States over twenty-one years of age and meeting certain residential requirements are entitled to vote for those members of the local legislature and the delegate to the House of Representatives.

We may say, then, in conclusion, that such political rights as the inhabitants of Alaska enjoy are granted either by Congress or by the Territorial Legislature acting under the authority of Congress.

¹⁷ Ibid., p. 521.

CHAPTER IV

THE ALASKA JUDICIAL SYSTEM AND THE ADMINISTRATION OF JUSTICE

Nowhere has the neglectful attitude of the Congress of the United States towards Alaska been more in evidence than in the failure to provide adequate machinery for the administration of justice and the prevention of crime in that Territory. It will be the purpose of the present chapter, before describing the present judicial system in Alaska, to point out the steps taken by Congress in the provision of a machinery for the administration of justice in that Territory, and to show how, with such machinery, the hindrances to the effective administration of justice were too great for human agencies to overcome.

In so far as there was any administration of justice in Alaska prior to 1884, it was at the hands of officers of the Departments of the Treasury and the Navy. In October, 1867, Alaska was turned over to the Army to administer without law, either civil or criminal. The period of military rule lasted until 1877, and, during this time, and for two years thereafter, lawlessness and crime were rife.¹ American citizens who went to the Territory believing that the laws of the United States would be extended for the protection of life and property were disappointed. In July 1868 the customs laws were extended to the Territory,² and these, with the exception of general United States statutes governing Indian lands, were the only laws which were applied to Alaska for a period of seventeen years, until 1884, when the first so-called organic act was passed. Five Army posts were established in this period, but the Army had no authority

¹ 67th Cong., 1st Sess., Hearings, House Com. on Territories, on H. R. 5694, p. 160.

² 15 Stat. L., 240.

to act in any civil or criminal case, and the result was a reign of crime. One would be murdered and there would be no law to punish the murderer. If houses were robbed, there was no court to try the robber. Children were robbed of the estates of deceased parents on account of the absence of probate authority. These and many other offenses went unpunished because of the fact that no tribunal had been constituted for adjudicating rights, either civil or criminal.

In June, 1877, the last of the military forces were withdrawn from Alaska, leaving only the agents of the customs department in charge of affairs there, without any law of any kind except that which pertained to the customs. The deputy collectors of customs served as adjudicators of disputes in some cases coming under the customs laws, and to a certain extent as general police,³ but they lacked authority to enforce law and order.⁴ Conditions now became even worse than under the military rule. Imported liquor and the product of the local stills were both in abundance, and law breaking was the rule rather than the exception. There was a conflict of authority in the Treasury Department which practically tied the hands of the deputy collectors of customs. The Customs branch of the department was obligated under the law to prevent the importation of intoxicating liquors, and the sale thereof was prohibited by general statute, yet the United States revenue officers issued license to sell such liquors.⁵

It should be mentioned here that by section 7 of the Act of July 27, 1868, the United States district courts of Washington, Oregon and California were given jurisdiction over offences committed in Alaska in violation of this act or the laws of the United States extended to Alaska thereby, but before a person charged with the commission of a crime in Alaska could be tried in one of these courts, he had first to

³ 15 Stat. L., 241.

⁴ 67th Cong. 1 Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 165.

⁵ *Ibid.*, p. 166; 15 Stat. L., sec. 4, p. 241.

be either found in the district in which he was to be tried or brought there.⁶

In 1879 the Navy Department took charge of affairs in Alaska in conjunction with the customs branch of the Treasury Department, and there is no doubt that the work of the Navy was far superior to that of the Army, and conditions in 1884 when partial civil government was granted to Alaska were much better than in 1877.⁷ One of the naval commanders prior to 1884 inaugurated an Indian police system for the maintenance of peace and good order in the native settlements. These policemen were selected from the most influential native men in the villages, and it appears that they were reasonably faithful in their efforts to preserve order.⁸

The first attempt made by Congress to provide even the semblance of a judicial system for Alaska was in 1884 through the organic act of that date. Under this act the machinery provided for the administration of justice consisted of one district court with the civil and criminal jurisdiction of district courts of the United States, and such other jurisdiction, not inconsistent with that act, as might be established by law. One district judge was appointed by the President for the Territory and was directed to hold at least two terms of the court in the district in each year, one at Sitka and another at Wrangel, and such special sessions as were necessary for the dispatch of the business of the court.⁹ There were also appointed by the President a district attorney, a marshal, and four commissioners for the District. The marshal was given the general authority and powers of the United States marshals of the States and Territories. He was the executive officer of the court and charged with the execution of all the processes of the court. He was directed to appoint four deputies who resided severally at the towns of Sitka, Wrangel,

⁶ United States vs. Williams (C. C.), 2 Fed. 62; 4 Stat. L., 118.

⁷ Statement of Lester D. Henderson, Commissioner of Education, Juneau, 1923, Alaska Daily Empire Print. (Pamphlet).

⁸ Ibid.

⁹ 23 Stat. L., 24.

Ounalaska and Juneau, and were ex-officio constables and executive officers of the Commissioners' Courts also provided for in the Act of 1884, and had the powers and duties of United States deputy marshals and those of constables under the laws of the state of Oregon then in force in Alaska.¹⁰

The commissioners were authorized to exercise all the duties and powers, civil and criminal, then conferred on justices of the peace under the general laws of the state of Oregon, in so far as the same were applicable. These commissioners were further given the jurisdiction and powers of commissioners of the United States circuit courts in Alaska. They had, under the Act, the power to grant writs of habeas corpus which were made returnable before the district judge. They were also given jurisdiction, subject to the supervision of the district judge, in all testamentary and probate matters, and for this purpose their courts were opened at stated terms and were courts of record provided with a seal for the authentication of their official Acts. They had the powers of notaries public, and kept a record of all deeds and other instruments of writing acknowledged before them and relating to the title to, or transfer of, property within the Territory, which records were subject to public inspection.¹¹

By section 7 of the act of 1884 the general laws of the State of Oregon (in force at that time) were extended to Alaska, in so far as they were applicable and not in conflict with the laws of the United States or the act itself.

With no further provision being made for the administration of law and justice in Alaska until the end of the last century, we do not wonder at the deplorable conditions which existed in that Territory during this period. A moment's reflection on the great size of Alaska with its varied topographical conditions, will convince one of the impossibility of carrying out the powers conferred upon the small number of judicial officers mentioned above. Eleven officials were charged with the stupendous task of administering justice

¹⁰ Ibid., 25.

¹¹ Ibid., 25.

and the enforcement of law throughout the realms of a Territory twice the size of Texas, with practically no means of communication or transportation.

With the above facts before us, let us note some of the hindrances to the administration of justice in Alaska. Chief among these hindrances have been the inadequate number of judicial officials, lack of mail and transportation facilities, difficulty of securing competent juries, adverse public sentiment towards prohibition of the liquor traffic, the uncertainty of officials as to the applicability of the laws of Oregon to Alaska, and the fee system of compensating officials.

The great difficulty which resulted from the inadequate number of officials provided in the act of 1884 for the administration of the laws is well illustrated in the lack of convenient facilities for taking oaths required by law for facilitating the administration of justice,¹² preserving the public peace and holding criminals for trial in out of the way places. The law made provision for the administering of oaths, taking testimony, punishing breaches of the peace, and holding criminals for trial, by only four commissioners, residing respectively at Sitka, Juneau,¹³ Fort Wrangel and Ounalaska. It is obvious that these four commissioners,¹⁴ even if always on duty and accessible, were not sufficient for the accommodation of forty thousand people scattered over an area of nearly six hundred thousand square miles with such limited means of transportation and communication as existed in Alaska at that time. Governor Knapp in his report of 1890 points out the fact that at that time there were about three hundred villages and towns in the Territory, some of which were at least three thousand miles from the nearest commissioner, or other person authorized by law to administer oaths, and without roads or regular communication of any kind.¹⁵

Another hindrance to the administration of justice in

¹² *Ibid.*, 27.

¹³ *Ibid.*

¹⁴ This number was increased to eight in 1897 (30 Stat. L., 56).

¹⁵ Report of Governor, 1890, House Ex. Doc., vol. xiii, 51st Cong., 2d Sess.

Alaska has been the lack of mail facilities and other forms of communication and transportation. Until recently mail facilities in Alaska were very poor and meagre. During all the latter part of the last century there was no mail communication except with a few of the towns and settlements of southeastern Alaska, and even here mail communication was only at monthly intervals.¹⁶ With no means of transportation or other communication within its reach, it was impossible for the District Court either to secure service of its process or enforce obedience to its orders in all that region of the Territory lying to the north of Juneau and west and northwest of Sitka. In the act of 1884 there was no provision for transporting the court officials, prisoners, witnesses and jurors to and from the place of holding court, yet such provision was absolutely necessary to anything approaching an efficient administration of the law in Alaska. There were a great number of native villages situated at a great distance from the mail steamer routes with no access to them except by canoe.¹⁷ The governor in his report of 1889 points out that in many cases it was impossible to serve processes because of the lack of some light draught vessel within the absolute and immediate control of the civil government. In his report of 1888, the governor of Alaska said:

Several murders have been committed since the inauguration of civil government in the Territory, and the murderers are still at large and likely to remain so, for no other reason than that the authorities are not supplied with the ways and means for making arrests; and in many sections lesser crimes are committed with impunity, the offenders knowing that they are beyond the reach of the courts.¹⁸

Unalakleet, according to the act of 1884, was made a judicial point with a resident commissioner and deputy marshal. Yet this settlement is 1200 miles from Sitka, at that time the seat of the nearest session of the district court, with no authorized or direct communication between them at that

¹⁶ Ibid., 1887, House Ex. Doc., vol. x, 50th Cong., 1st Sess.

¹⁷ Ibid., 1889, H. Ex. Doc., vol. xiii, p. 239, 51st Cong., 1st Sess.

¹⁸ Ibid., vol. xii, pp. 100-102, 50th Cong., 2d Sess.

time. This meant that a litigant, to avail himself of the district court tribunal, had to go by way of San Francisco—dependent for the journey upon occasional private transportation—a distance of nearly four thousand miles, and had to return in the same manner. Needless to say, the time and expense required for such a feat made it impossible for most litigants to avail themselves of the district court. There was not even a mail service from Sitka to Ounalaska until May, 1891, and this was only once a month from April 1 to October 31.²⁰

The peculiar physical conformation of Alaska, with its vast extent of territory, rendered its accessibility very difficult before modern means of transportation were provided therein. It has an area of nearly 600,000 square miles and a coast line of about 25,000 miles. It has over eleven hundred islands with the most intricate and extensive system of channels and waterways. There was in the latter part of the last century a large number of Indian villages scattered over this whole region of islands and mainland, and there were hundreds of mining, fishing, manufacturing and other business enterprises of white settlers, many of whose establishments were large and had a great amount of capital invested in them. Yet with all this there were less than a dozen miles of graded road in the Territory.²¹

Under the conditions with respect to communication and transportation as just described, it cannot be denied that an efficient administration of justice in Alaska was impossible with the small number of officials provided for the task.

But there were further hindrances to this important task, and the trouble afforded by the attempt to enforce the prohibition of the liquor traffic was not the least of these. Section 14 of the Act of May 17, 1884, prohibited the importation, manufacture and sale of intoxicating liquors in Alaska,

²⁰ 67th Cong., 1st Sess., Hearings, House Com. on Territories, on H. R. 5694, p. 165.

²¹ Rept. of Governor, 1889, H. Ex. Doc., vol. xiii, p. 242, 51st Cong., 1st Sess.

except for medicinal, mechanical and scientific purposes.²² Extreme difficulty was encountered in the early period of the civil government in the attempt to enforce this law. This was doubtless the chief field of lawlessness.

Of the criminal business of the courts down to 1899, when the prohibitory law was repealed, a large proportion was either directly connected with the sale and importation of intoxicating liquor or grew out of its use.

On account of the adverse public sentiment of the Territory concerning the prohibition law, it was practically impossible to impanel a grand jury to indict, or a petty jury to convict persons charged with its violation.²³ Hence this law was well nigh a dead letter. This adverse sentiment was intensified by the inconsistent attitude of the Government itself. This was brought about by the collection of revenue by deputy internal revenue officers from those who were conducting saloons and manufacturing beer. When the whiskey dealers and brewers were brought to trial for violation of the prohibition law within the Territory, they showed their receipts for money paid on account of their business to a revenue collector of the United States, and even though the judge was prompt to rule out this as evidence in favor of the accused, a jury almost invariably brought in a verdict of "not guilty."²⁴

The people of Alaska took the position that Congress in passing this prohibitory law had in mind only the Indians, that it was designed to meet conditions peculiar to the Indians, and that in practically ignoring it in regard to the whites they were carrying out the spirit of the law and fulfilling the intent of its makers.²⁵ In this connection it is quite noticeable that in the governor's statement of the list of some 175 offenses for which prosecutions were brought

²² 23 Stat. L., 25.

²³ Rept. of Governor, 1897, H. Ex. Doc., vol. xiv, p. 176, 55th Cong., 2d Sess.

²⁴ Ibid.

²⁵ Rept. of Governor, 1896, in Report of Secretary of Interior, vol. iii, p. 203.

during the year ending June 30, 1889, there is none for violation of the laws prohibiting the sale and manufacture of intoxicating liquors to others than Indians.²⁶ Yet the governor declares that it was a notorious fact that liquor was furnished without restraint or concealment in all the towns where there were white residents.

Officials in Alaska charged with the responsibility of enforcing this law, almost without exception, testified to the total lack of enforcement of it in so far as white men were concerned, the impossibility of enforcement with the means at hand, and to the consequent demoralizing effect of such a law, which was "constantly, openly and flagrantly violated,"²⁷ upon law in general.

The United States district attorney for Alaska in a statement to the governor in 1891, relative to the steps taken to enforce the prohibition law, declared that the violations of the liquor laws had been the source of more anxiety and labor to all the officials in Alaska than all other violations of law combined, and that he found public sentiment almost a unit against the enforcement of the prohibition laws. The condition of affairs with respect to the liquor laws in Alaska as seen by the district attorney may best be stated in his own words, in the Governor's report:

There now are (1891), said the district attorney, and for many years have been, within the Territory two or three breweries manufacturing and selling beer for other purposes than those prescribed by the statutes. There are also many persons openly engaged in selling intoxicating liquors contrary to law. These facts I have laid before each grand jury, advising them that it was their sworn duty to indict all such persons. Yet in every instance they have not only refused to indict, but have refused to hear any testimony upon the subject whatever. Some of these grand juries have been composed of the best representative citizens of the Territory, yet the sentiment is so universally against the enforcement of the present liquor laws that no indictment can be had and no conviction secured except where the liquor has been sold or given to a native.²⁸

²⁶ Rept. of Governor, 1889, H. Ex. Doc., vol. xiii, p. 241, 51st Cong., 1st Sess.

²⁷ Rept. of Secretary of Interior, H. Doc., vol. xvi, pp. 181-197, 55th Cong., 3rd Sess.

²⁸ Rept. of Governor, 1891, H. Ex. Doc., vol. xvi, p. 503, 52nd Cong., 1st Sess.

Every governor of Alaska from 1884 to 1899 testified to the conditions here mentioned with regard to the liquor laws in that Territory, and each recommended the repeal of the law and the substitution therefor of a stringent license law.²⁹ This action, as we shall see, was taken in 1899.

A further hindrance to the administration of justice in Alaska has been the difficulty of securing competent juries. Under the act of 1884 permanency of residence was a prerequisite for jury service in Alaska.³⁰ That this was an illogical arrangement is obvious upon examination of other existing conditions. Since the inhabitants of Alaska were deprived of the right of the elective franchise and self-government, it is not unnatural to suppose that any citizen of the United States owning property or merely residing in Alaska temporarily would have been as much interested in seeing all laws enforced as the permanent residents. Under the act of 1884 the general land laws were withheld from Alaska,³¹ and her people consequently had little encouragement to make there a permanent home. Hence the population of Alaska was largely transitory in its nature, and many of her best people were not permanent residents. Obviously these people would have been of great assistance in enforcing the law had they been eligible to sit as jurors. It was thus almost impossible to secure a sufficient number of competent jurors to hold a term of court in certain quarters of the Territory. The anomalous state of the law as to the impaneling of juries was an equally great hindrance, as we shall presently see in another connection.

The greatest inconveniences encountered in drawing juries were: first, the limited number of competent jurors to be found in the Territory; second, the vast extent of territory from which they had to be drawn; third, the inadequate means of transportation or communication between the

²⁹ Rept. of Sec. of Interior, H. Doc., vol. xvi, pp. 181-197, 55th Cong., 3d Sess.

³⁰ Rept. of Sec. of Interior, 1889, H. Ex. Doc., vol. xiii, 51st Cong., 1st Sess.; also 23 Stat. L., 26.

³¹ 23 Stat. L., 26.

various settlements, and the consequent long delays in impaneling a jury.

Another hindrance in the way of an effective administration of justice in Alaska has been the fee system in effect there, and which to a certain extent still persists.³² Most of the commissioners and deputy marshals obtain no other compensation for their services than the fees which they collect. If people are peaceful and orderly, these officers are left practically without an income, which means that such communities must be left without commissioners or magistrates who can issue a warrant or give proper protection to life and property. Then there are communities in Alaska which are too small to afford officers a living from the fees collected, and hence are left without protection.³³

In addition to the difficulties and hindrances above mentioned in the way of a satisfactory enforcement of the laws and administration of justice in the Territory, have been the laws themselves and the anomalous modes of procedure under which the officers of the courts were compelled to operate them. The general laws of the state of Oregon, in force May 17, 1884, were, by the terms of the organic act of that date, "declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States,"³⁴ and the same act further declared "the laws of the United States, not locally inapplicable to said district and not inconsistent with the provisions of this act are hereby extended thereto."³⁵

It was left for the courts to decide, as occasion demanded, whether or not any particular law of the United States was or was not locally inapplicable to the Territory; whether any general law of Oregon was or was not in conflict with the provisions of the organic act or the laws of the United States,

³² U. S. Comp. Stat. (1918) p. 528.

³³ Rept. of Dept. of Interior, H. Ex. Doc., vol. xxii, No. 5, pt. 2, 58th Cong., 2d Sess.; also Report of Governor, 1898, p. 223.

³⁴ 23 Stat. L., sec. 7, p. 26.

³⁵ Ibid. sec. 9, p. 27.

and whether it was or was not applicable to the Territory of Alaska. It was held by the United States circuit court for Oregon that it was only when the laws of the United States were silent or made no provision on the subject that resort could be had to the laws of Oregon, so far as they were applicable; that no law of Oregon was to have effect in Alaska if it were in conflict with a law of the United States, and that "there is such a conflict (with a law of the United States) within the meaning of the statute, not only when these laws contain different provisions on the same subject, but when they contain similar or identical ones."³⁶

Adherence to this rule raised many difficult questions, caused many inconveniencies, and presented many difficulties that called for a change in the organic act of 1884. Yet such a change was not to come until the end of the century. The anomalous situations that inevitably resulted from the above mentioned conditions may well be illustrated by two or three examples. The crime of murder, if committed within any place or district of country under the exclusive jurisdiction of the United States, as Alaska was, was a capital offense and had no degrees,³⁷ whereas under the Oregon law the crime was either murder in the first degree, punishable by death, or murder in the second degree punishable with life imprisonment.³⁸ The same condition existed with reference to the crime of rape. It was a capital offense under United States laws, whereas in Oregon it was punishable by imprisonment only. Another instance of the same condition is found in the impaneling of juries, as intimated above. According to the Acts of Congress when grand and petit juries were to be drawn, the names of not less than three hundred qualified persons were to be placed in the box at the time of drawing.³⁹ According to the Oregon law this list was to contain the names of two hundred persons, pro-

³⁶ *Kie vs. United States*, 11 Sawyer 579.

³⁷ 1 Stat. L., 113.

³⁸ Rept. of Governor, H. Ex. Doc. vol. xvi, p. 505, 52d Cong. 1st Sess.

³⁹ 21 Stat. L., 43.

vided there were that number of qualified jurors upon the assessment roll. Alaska had no assessment roll.⁴⁰ The laws of the United States also required not less than sixteen grand jurors, while the laws of Oregon required only seven.

Each year two terms of the district court were held, at each of which a jury was required to be drawn. Yet as the District Judge stated in a letter to the Governor on August 17, 1891: "It is simply impossible to comply with the United States law and place the names of 300 qualified persons in the box at each drawing, without calling upon citizens residing a thousand miles away, whom in most cases it would be difficult and inordinately expensive, if not impossible, to summon to court."⁴¹

Thus the form of procedure to be followed by the courts in Alaska was always one of uncertainty, and each judge upon assuming the duties of his office, owing to the well nigh impossible task of reconciling the organic act of 1884, the Revised Statutes, and the Code of Oregon, was forced to designate some form of procedure to be followed with no assurance that his successor could conscientiously adopt the same form. Said the District Attorney for Alaska in 1891: "So uncertain is the meaning of the language of the organic act that each judge who has occupied the bench since 1884 has placed a different construction on various clauses in the Act."⁴²

These unfortunate conditions remained wholly unabated until 1899, despite the assiduous pleas of every governor of Alaska and others appointed to duty in that Territory. Finally, a commission appointed by the President in pursuance of an Act of June 4, 1897, to revise and codify the criminal and penal laws of the United States, prepared in accordance with Resolution 688 of the Senate, a code of criminal laws and procedure for Alaska.⁴³ The commission, in accordance

⁴⁰ Rept. of Governor, H. Ex. Doc., vol. xvi, p. 505, 52d Cong., 1st Sess.

⁴¹ *Ibid.*, p. 505.

⁴² *Ibid.*, p. 504.

⁴³ 55th Cong., 1st Sess., S. 705.

with the Act, reported to the Attorney-General early in 1898 the result of their labors, and the work was approved by the Senate,⁴⁴ but failed to pass the House until March 3, 1899, when the Act to define and punish crimes in the District of Alaska and to provide a code of criminal procedure for said district was approved.⁴⁵ The criminal and penal laws embodied in this act were compiled from the Revised Statutes of the United States and from the Code of Oregon, and the procedure to be followed in the punishment of crimes and offenses defined in the Act is clearly set forth. This Act gave the court much more liberty in obtaining juries and "made it possible to try an offender by a jury that was known to be legal."⁴⁶

Section 406 of the Act provided for the appointment of additional commissioners by the judge of the district court, and section 408 for the appointment of additional deputy marshals by the United States Marshal for the Territory, who were to be ex-officio constables and executive officers of the commissioners and justices courts.⁴⁷ The Act also placed a license upon the sale of liquor in the Territory and provided for the regulation thereof in a much more effective manner than under the prohibitory law of 1884.⁴⁸ Governor Brady in his report of October, 1899 stated that "those sections (of the Act) which provide for the selling of intoxicating liquors have been pretty generally complied with. Heretofore there were ten places in Sitka where liquors were sold in defiance of the law; now there are but two, in compliance with the law. The license fees are high and the safeguards are numerous, and there being such a general approval of the law, we feel that the communities are better protected now than they were before."⁴⁹

⁴⁴ Cong. Record, p. 5363, 55th Cong. 2d Sess.

⁴⁵ 30 Stat. L., 1253.

⁴⁶ Rept. of Governor, H. Mis. Doc. No. 5, pt. 2, p. 37, 56th Cong., 1st Sess.

⁴⁷ 30 Stat. L., 1330.

⁴⁸ 30 Stat. L., 1337.

⁴⁹ Rept. of Governor, 1899, H. Doc., vol. xxi, 56th Cong., 1st Sess.; *ibid.*, 1900, H. Doc., vol. xxx, 56th Cong., 2d Sess.

On May 31, 1898, an amendment to Senate Resolution 688, which had made possible the criminal code of Alaska, was adopted by the House, requiring this same commission to prepare a civil code for Alaska. The results of this work received the Approval of Congress on June 6, 1900, in "an act making further provisions for a civil government for Alaska and for other purposes."⁵⁰ By the terms of this act the Territory of Alaska was divided into three judicial divisions and a judge assigned to each division together with a district attorney and marshal for each division.⁵¹

On March, 1909, the above provision of the Act of June 6, 1900, was so amended as to provide, among other things, for a fourth judicial division and an additional district attorney and marshal, that is, one for each of the four judicial divisions.⁵² An Act of March 2, 1921, further amending the Act of June 6, 1900, defines the boundaries of the four judicial divisions of the Territory.⁵³

Since the present judicial system of Alaska is based upon the above Acts of Congress, we are now prepared to consider the organization, jurisdiction and nature of this system as at present constituted. The judicial power of the Territory is vested in the United States District Court for Alaska and in probate and justices courts. The District Court is divided into four divisions, which are also recording divisions; and each division is presided over by a judge appointed by the President, by and with the advice and consent of the Senate, for a term of four years. This court has the same general original jurisdiction as the United States District Courts in the States, and also appellate jurisdiction in criminal actions and in civil causes when the amount in controversy exceeds \$50, arising under the Acts of Congress applicable to the Territory and laws passed by the Territorial legislature. Each of the four judges, during his term of office, must reside in the division of the district to which he is assigned

⁵⁰ Cong. Record, p. 6713, 56th Cong., 1st Sess.

⁵¹ 31 Stat. L., 322.

⁵² 35 Stat. L., 839.

⁵³ 41 Stat. L., 1203.

by the President, at least one general term of the court must be held each year at a designated point in each division, and such additional terms at other places in each division as the Attorney General may direct. Each of the four judges is authorized and directed to hold such special terms of court as may be necessary for the public welfare or for the dispatch of the business of the court at such times and places in their respective districts as any of them, respectively, may deem expedient, or as the Attorney General may direct.⁵⁴ The probate and justices courts are located in precincts designated in each judicial division by the district judges. They are presided over by commissioners, who are appointed by the district judges.⁵⁵ These commissioners are "ex-officio justices of the peace, recorders, and probate judges, and are directed to perform all the duties and exercise all the powers, civil and criminal, that are conferred on the United States commissioners by the general laws of the United States and the special laws applicable to the district."⁵⁶ They have the power to grant writs of habeas corpus, which writs are made returnable before a district judge, and the same proceedings are had thereon as if the writ had been granted by the judge under the general laws of the United States in such cases. They also have the powers of notaries public and are directed to "keep a record of all fines and forfeitures received by them, and pay over the same quarterly to the clerk of the division of the district court in which they were appointed."⁵⁷

One clerk is assigned to each division of the District Court, and during his term of office resides at such place in the division as the Attorney General may direct. Each clerk performs in his division "the duties required or authorized by law to be performed by clerks of the United States courts in other districts" and such other duties as may be prescribed by the laws of the United States relative to the Territory of Alaska. To this end he preserves copies of all laws

⁵⁴ U. S. Comp. Stat. 1925, Cumulative Supp., p. 249.

⁵⁵ *Ibid.*, 1918, p. 527, sec. 356 A.

⁵⁶ *Ibid.*, p. 527, sec. 356 A. ⁵⁷ *Ibid.*, p. 527, sec. 356 A.

applicable to the Territory and all records, and keeps a record of all proceedings and official Acts of his division of the court; collects and receives "all money arising from the fees of his office, from licenses, fines, forfeitures, judgments or on any other account authorized by law to be paid to or collected by him, and shall apply the same except the money derived from licenses, to the incidental expenses of the proper division of the district court."⁵⁸ For each of the four divisions of the District Court there is one District Attorney, appointed by the President by and with the advice and consent of the Senate of the United States. The law requires that each of the district attorneys shall perform the duties required of United States district attorneys in other districts, and such other duties as may be required by law. Each receives a salary of five thousand dollars a year, and is prohibited while in office from accepting retainers or engaging in any other legal business in the district than that which relates to the duties of his office. The Attorney General, upon the recommendation of the district attorney, may appoint and remove at pleasure, one or more assistant district attorneys and one or more clerical assistants, "who shall receive such compensation as the Attorney General may fix."⁵⁹

Likewise, each division of the court is allowed a marshal, appointed by the President and the Senate, and each marshal is required, subject to the approval of the Attorney General, to appoint such deputy marshals as he may deem necessary for the efficient execution of the law and the orders of the court and commissioners. The law provides that each marshal shall have the general authority and power and be subject to the obligations of United States marshals in the States and Territories.⁶⁰ He is, therefore, the executive officer of the court and as such is charged with the execution of all processes, and with the custody of prisoners and insane persons. He is also ex-officio keeper of the jails and peni-

⁵⁸ Ibid., p. 527, sec. 3567.

⁵⁹ Ibid., p. 527, sec. 3568.

⁶⁰ Ibid., p. 528.

tentiaries of his division. When, in the opinion of the Attorney General, the public interest requires it, he may allow the marshal to employ necessary office deputies and clerical assistance at a salary to be fixed by himself, and paid as other officers of the court are paid. These deputy marshals are ex-officio constables and executive officers of the commissioners of the Territory.⁶¹

The general nature and jurisdiction of the Alaska system of courts may now be considered. In the first place it may be noted that this is a federal system. That is to say, its organization, jurisdiction, qualifications and duties of its officials, etc., are all determined by federal legislation and not by Territorial legislation. In this sense Alaska has no Territorial court. It may be well to point out here that the only judicial office in Alaska which has emanated from Territorial legislation is that of the Attorney General of the Territory. This office was created by the Territorial legislature in April, 1915, and is filled by popular election by the voters of the Territory qualified to vote for members of the Territorial legislature. The Attorney General, thus elected for a term of four years, is the legal advisor of the Governor, Treasurer, the Secretary and other officers of the Territory. It is provided in the law that he shall bring, prosecute and defend in the name of the Territory, all necessary and proper actions or suits for the collection of the revenue under Territorial laws; that he shall file information and prosecute all offenses against the revenue and the other laws of the Territory, prosecution of which is not otherwise provided for, that he shall, when required by the legislature or any member thereof, give legal advice concerning any law or proposed law; and that he shall perform "all such other duties as may be required by law or as usually pertain to the office of Attorney General in a Territory."⁶²

In the second place it should be noted that the district court for Alaska, although invested with the civil and crimi-

⁶¹ Ibid.

⁶² Alaska Sessions Laws (1915) Ch. 77.

nal jurisdiction of a district court of the United States, is not in the strict constitutional sense a United States court. That is, it does not belong to the class of courts mentioned in the third article of the Constitution, the judges of which are entitled, under the Constitution, to receive a salary which during their term of office cannot be diminished, and who hold office, beyond the power of Congress to provide otherwise, during good behavior, being removable only by impeachment. This court is, on the other hand, a congressional or legislative court, created "in virtue of the general right of sovereignty which exists in the government" or in virtue of that clause of the Constitution which enables Congress "to make all needful rules and regulations respecting the Territory or other property belonging to the United States."⁶³ On this ground it has been held by the Supreme Court of the United States that the President can suspend from office a district judge for Alaska and that such judge is not entitled after suspension to receive his salary for the period of suspension.⁶⁴

In the third place, the District Court of Alaska is regarded as the supreme court of that Territory for purposes of review by the United States Circuit Court of Appeals for the ninth circuit or by the United States Supreme Court in the cases where appeal lies to the latter.⁶⁵

The jurisdiction accorded the District Court of Alaska is of a dual nature. First, it has the jurisdiction of United States District Courts within the States, and second, it has the general jurisdiction of an ordinary court of record to hear, try and determine all causes, both civil and criminal, of a local nature.⁶⁶ In other words, this court has both United States and Territorial jurisdiction. On this ground it was held in *United States vs. North Pacific Wharves, etc.*,

⁶³ *The Coquitlam vs. United States*, 163 U. S. 346.

⁶⁴ *McAllister vs. United States*, 141 U. S. 174.

⁶⁵ See *The Coquitlam*, 163 U. S. 346; 26 Stat. L., 827; 36 Stat. L., 1134.

⁶⁶ *United States vs. North Pacific Wharves and Trading Co.*, 4 Alaska 552; U. S. Comp. Stat. 1918, p. 526.

with regard to the provision for calling only one grand jury, that if the grand jury is investigating a local crime, it shall follow the specific provisions of the code of criminal procedure. Whereas if it is investigating national crimes or infractions of law not territorial it shall follow the procedure prescribed by the laws of the United States with respect to grand juries of the United States courts.

The admiralty jurisdiction of the District Court of Alaska is coextensive with that of a district court of the United States and is in no way limited by the codes of Alaska. In the case of *The Nugget*, the Alaska District Court, speaking through Judge Wickersham said, "Its common law and equity practice is limited by the codes of Alaska, but its admiralty practice is determined only by the course of admiralty proceedings in the United States district courts."⁶⁷

Although Alaska, as we have seen, is divided into four judicial divisions, with an established district court in each, the jurisdiction of each court extends over the entire Territory of Alaska.⁶⁸ On this ground, it has been held by the District Court of Alaska that a grand jury in any division may indict a person for a crime committed anywhere within the Territory.⁶⁹ The court, however, in which an action is pending may, on motion, change the place of trial in any civil or criminal action to another place in the same division or to a designated place in another division under the following conditions: (1) If there is reason to believe that an impartial trial cannot be had therein; (2) when the convenience of witnesses and the ends of justice would be promoted by the change; (3) when from any cause the judge is disqualified from acting and the judge of another division does not appear and try the action; (4) on motion of the court itself, when it appears that, on account of the available means of travel, the defendant will be put to unnecessary expense and inconvenience if summoned to defend in the

⁶⁷ *The Nugget*, 1 Alaska Rep. 202; *Ex Parte Cooper*, 143 U. S. 472.

⁶⁸ U. S. Comp. Stat. (1918) p. 526.

⁶⁹ *United States vs. Jerry Boy*, 6 Alaska Rep. 379.

division where the action has been commenced, and if it appears to the satisfaction of the court that an action has been commenced in a division remote from the residence of the defendant, for the purpose of causing unnecessary expense or inconvenience, the place of trial is to be changed at the cost of the plaintiff and such cost shall not be recovered from the defendant. In any criminal prosecution the court must change the place of trial whenever it appears to its satisfaction that the defendant will not be prejudiced thereby and that the United States will be put to unnecessary expense in the prosecution, if the transfer is not made.⁷⁰

The probate and justices courts, in addition to the functions previously mentioned, have limited original jurisdiction in probate, insanity⁷¹ and minor civil and criminal matters arising under the Federal statutes applicable to the Territory and under its Territorial laws.⁷² These courts, of course, have no appellate jurisdiction. The criminal jurisdiction of the justices courts is defined in the Criminal Code of Alaska to cover the following crimes: (1) larceny, where the punishment therefor may be imprisonment in the county jail or by fine; (2) assault, or assault and battery, not committed with intent to commit a felony, or in the course of a riot, or with a dangerous weapon, or upon the public officer in the discharge of his duties; (3) of any misdemeanor punishable by imprisonment in the county jail, or by fine, or by both.⁷³

With the exception of prize cases and those involving certain federal questions, the right to review on appeal or writ of error, the judgment of the District Court of Alaska belongs to the circuit court of appeals, ninth circuit,⁷⁴ and the judgments of the latter court are final in all such cases and not reviewable by the Supreme Court on writ of error.⁷⁵ If,

⁷⁰ U. S. Comp. Stat. 1918, p. 527.

⁷¹ *Ibid.*, p. 536.

⁷² General Information regarding The Territory of Alaska, 1922, Dept. of the Interior, p. 18. (Pamphlet).

⁷³ 30 Stat. L., 1330.

⁷⁴ U. S. Comp. Stat. 1918, p. 159.

⁷⁵ *Alaska Pacific Fisheries vs. Territory of Alaska*, 249 U. S. 53.

however, this court should desire instruction from the Supreme Court upon any question of law involved in such cases, it may certify such question to the Supreme Court, and the instruction of the latter court thereon shall be binding upon the circuit court of appeals.

In prize cases and those involving the construction or application of the Constitution of the United States, appeals and writs of error may be taken from final judgments of the District Court of Alaska directly to the Supreme Court of the United States.⁷⁶ The jurisdiction of the Supreme Court to review judgments of the District Court of Alaska because of the presence of a constitutional question exists, however, only when such question has actually been raised in the trial court.⁷⁷

In considering the question as to what extent this judicial system has solved the problems of Alaska relative to the administration of justice and the maintenance of law and order, we are forced to admit that much remains to be done. The increase in the number of courts and officers thereof involved in the present judicial system marked a great improvement in the machinery for the serving of process and the fair trial of offenders against the law. But for the enforcement of law and the detection and prevention of crime, conditions are still little better than formerly.⁷⁸ Outside of the incorporated towns, Alaska is still without police protection except as is afforded by the various wardens and the special employees for the suppression of the liquor traffic among the natives. The marshal's office is so cramped by restrictions concerning expenditures for the detection of crime as to make it almost impossible to prevent crime or to get control of the lawbreakers after a crime has been committed. Governor Riggs in his annual report of September 26, 1919, said: "If I were asked, what is the crying

⁷⁶ U. S. Comp. Stat. 1918, p. 170.

⁷⁷ *Itow vs. United States*, 233 U. S. 581.

⁷⁸ Annual Report, Dept. of Interior, 1918, vol. ii, p. 560.

need of Alaska? I should unhesitatingly answer, Police protection."⁷⁹

Doubtless no one will dispute the statement that the prevention of crime is more desirable than the punishment of crime after its commission. Yet Alaska has no force to serve this purpose. It will be recalled that there are four United States marshals, one for each of the four divisions into which the Territory is divided, in Alaska. There are something over fifty deputy marshals, including the chief deputies, clerks, and stenographers of the various marshals offices, leaving only about forty deputies available for the enforcement of law over nearly six hundred thousand square miles of territory. Even these marshals are so cramped by departmental restrictions that they cannot be considered a police force in any sense of the word. They are technically only process servers except when they exceed their authority under the law.⁸⁰

Besides the marshals and their deputies there are now in Alaska for the enforcement of the law some thirty-five wardens of various sorts—game wardens under the governor, fur wardens under the Bureau of Biological Survey, fish wardens under the Bureau of Fisheries, forest rangers under the Forestry Service, and special officers for the suppression of the liquor traffic, under the governor.⁸¹ There is no evidence that these marshals and wardens have not been personally competent in the particular service in which they have been employed, but each acts independently of others, and takes, according to the governors' reports, little interest in any law enforcement which is not connected with the special service in which he happens to be employed.⁸²

It would seem that a Federal Police force under the Department of Justice would be a much more effective means of detecting and preventing crime than these present un-

⁷⁹ *Ibid.*, vol. ii, p. 41.

⁸⁰ *Ibid.*; also U. S. Comp. Stat. 1918, p. 528.

⁸¹ Rept. of Governor, 1920, to the Secretary of Interior, vol. ii, p. 44, of Annual Rept. of Sec. of Interior, 1920.

⁸² *Ibid.*

correlated services. Such a federal force was recommended by Governor Riggs in his report of 1920, and on prior occasions. In addition to the duties of detecting and preventing crime and the enforcement of law, such a police force would be available, the governor points out, "for quarantine duty, the regulation of health and sanitation, search for lost persons, and for rescue work."⁸³

Another remedial step in the enforcement of law and the administration of justice in Alaska, which it has been suggested should be taken, is that of the consolidation of all law-enforcing agencies under the Department of Justice. It has already been noticed how diffused these various agencies are. Section 2 of the act of June 6, 1900, "making further provision for a civil government for Alaska, and for other purposes, provides that the governor "shall have authority to see that the laws enacted for the district are enforced and to require the faithful discharge of their duties by the officials appointed to administer the same."⁸⁴ Now the officials charged with the administration of the laws governing Alaska are, with the exception of the various wardens mentioned above, under the control of the Department of Justice, and it would logically appear that if one of the principal duties of the governor is to see that these officials perform their duties in a faithful manner, he too should be an official of the Department of Justice. It will be recalled, however, that he is an official of the Department of the Interior.

In order to prevent conflict of authority and to establish a definite line of responsibility and a uniform policy for the enforcement of law, the governors of Alaska have, in their recent annual reports, recommended the consolidation of all law-enforcing agencies in Alaska under the Department of Justice.⁸⁵

⁸³ Ibid.

⁸⁴ U. S. Comp. Stat. 1918, p. 525.

⁸⁵ Rept. of Governor, 1922, p. 11; 1924, p. 7

CHAPTER V

THE LEGISLATIVE POWER IN ALASKA

For forty-five years, from 1867 to 1912, Congress was the only body having power to legislate for Alaska, and for thirty-nine years the Territory was without an agent through whom it could make its voice heard in the Congress. Section 9 of the organic Act of 1884 definitely prohibited the establishment of a legislative assembly in Alaska and the sending of a delegate to Congress therefrom.¹ Almost from the beginning of the civil government requests for representation for Alaska in the popular branch of Congress came from official quarters in Alaska.² This question was vigorously debated in every Congress from the Fifty-third to the Fifty-ninth inclusive. In this period a number of bills providing for the election of a delegate were introduced and favorably reported by the Committees of each Congress, but for one reason or another all failed to receive favorable consideration in one or both houses of Congress.³

Finally, Senate bill 956, "Providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," which was favorably reported by the House Committee on Territories,⁴ was passed by both houses of Congress and was approved on May 7, 1906.⁵ The arguments in favor of a delegate, as stated by the Committee on Territories in House Report No. 1472, were as follows:

First, there is a large and ever increasing body of the best kind of American citizens in Alaska, who have developed the country and made Alaska commercially great. Second, most of the relations with the Territory are direct with the General Government,

¹ 23 Stat. L., 27.

² Rept. of Governor, 1886, in Rept. of Secretary of Interior, vol. ii, H. Ex. Doc., vol. ix, 49th Cong., 2d Sess.

³ 59th Cong., 1st Sess., H. Rept. No. 1472 and S. 956.

⁴ Ibid.

⁵ U. S. Comp. Stat., 1918, p. 523.

which transactions fall in great measure upon the Governor who has been compelled to neglect his duties at home in the performance of more pressing and purely voluntary ones at Washington. The people are in need of a Delegate to look after the multifarious affairs of the Territory in the Departments at Washington. The Departments themselves want it.⁶

Under the Act of May 7, 1906, the Alaskan Delegate is to be elected by the people of the Territory. He must have been at the time of his election for seven years a citizen of the United States; must be an inhabitant and qualified voter of Alaska; must be at least twenty-five years of age; and is to have the same salary and privileges as delegates from other Territories of the United States, except that in lieu of allowances he receives \$1,500 mileage to cover all other expenses except stationery and clerk hire.⁷

After the "Act Providing for the election of a Delegate to the House of Representatives from the Territory of Alaska," the next great movement was that towards a local legislature with a completely organized Territorial Government. This, however, was not altogether a new movement, for as early as 1886, the Governor in his annual report deplored the fact that such a right had not been extended to Alaska.⁸ Likewise Governor Swineford in his report of October 1, 1887, said, referring to the organic Act of 1884, "It expressly denies to the people the right of local self-government. . . . Every consideration of justice as well as of public policy forbids that this right shall be longer withheld."⁹

The question of territorial government continued to be agitated by a few individuals and newspapers, but many more people in the Territory still felt that a greater need of Alaska, without which territorial government would not be feasible, was legislation extending the land laws of the United States

⁶ Ibid., p. 12, n. 3.

⁷ Ibid., p. 523.

⁸ Rept. of Governor, H. Ex. Doc. No. 1, pt. 5, vol. ix, 49th Cong., 2d Sess.

⁹ Rept. of Governor, H. Ex. Doc. No. 1 pt. 5, vol. i, 50th Cong., 1st Sess.; H. Mis. Doc. No. 5, pt. 2, vol. xxx, 56th Cong., 2d Sess.

to the Territory, to the end that outsiders might be encouraged to occupy the land and develop its resources. It was felt that, in view of the sparseness of the population and the distance between communities, a change in the form of government would not better the condition of the people of Alaska, and it was also thought that if territorial government were extended to Alaska the people thereof would have to be taxed to support such a government, and that until it became possible for more people to acquire title to land, such expense would be too great a burden to bear.¹⁰ Even as late as 1911 territorial government was opposed by the Governor of Alaska at that time.¹¹ Prior to this time, however, numerous bills providing territorial government for Alaska had been introduced in Congress and hearings had on them, but without positive results.¹²

Among the chief objections advanced against a territorial legislature for Alaska were the following: (1) That the population of Alaska was so small as compared with the great size of the Territory, so unstable and migratory, as to render a territorial legislature impracticable; (2) that under the proposed change the Territory would lose more of material benefits than it would gain; and (3) that the people of Alaska did not want a local legislature.¹³

These and other objections to a territorial legislature for Alaska were not destined to be effective beyond the first decade of the present century. In the extraordinary session of the sixty-second Congress on April 4, 1911, "A bill to create a legislature in the Territory of Alaska, to confer

¹⁰ Rept. of Governor, 1902, H. Mis. Doc., No. 5, pt. 2, vol. xxii, 57th Cong., 2d Sess.

¹¹ Rept. of Governor, 1911, Annual Reports, Dept. of Interior, vol. ii, pp. 496-499.

¹² 50th Cong., 1st Sess., H. R. 6555; 58 Cong., 2d Sess., H. Com. on Terr., Hearings, Apr. 4, 1904, and Feb. 8-24, 1904; 61 Cong., 1 Sess., H. R. 10576, and H. R. 10323; 60 Cong., 1 Sess., H. R. 4820, and H. R. 17649; 61st Cong., 2d Sess., S. Com. on Terr. Hearings, on S. 5436, Jan. 20-Feb. 19; H. Com. on Terr., Hearings on H. R. 10418 and H. R. 19860 Mar. 7-April 12, 1910.

¹³ Rept of Governor, 1911, Annual Repts., Dept. of Interior, vol. ii, pp. 496-499.

legislative power thereon and for other purposes" was introduced by Judge Wickersham, Delegate from Alaska, and was unanimously reported from the Committee on Territories on August 21, 1911.¹⁴ A duplicate bill was introduced in the Senate on April 27, 1911. In the hearings on these bills the objections which had been advanced against territorial government were amply met by a sufficient array of facts and figures.¹⁵ To the House Committee were presented facts showing that the density of population of Alaska per square mile was greater than that of any other Territory of the United States, except Montana, when given an elective legislative assembly, that the population of Alaska was nearly evenly divided between the four judicial divisions, and that this population was sufficiently permanent to support a locally elected legislature.¹⁶ An important point made in the hearings was, not only that the people had a constitutional right to govern themselves within the limitations placed upon other Territories prior to statehood, but that Congress did not have the time nor the knowledge of its needs, and how to meet those needs, with which to legislate for the Territory of Alaska.¹⁷ Judge Wickersham, testifying before the House Committee, said: "There will be no development of any kind in the Territory of Alaska until the people themselves are organized and constitute the nucleus of that development."¹⁸

After some debate on certain doubtful features of this home rule bill, it was passed with slight amendments and approved on August 24, 1912.¹⁹ In order to secure the passage of this bill certain concessions limiting the powers of the territorial legislature had to be made to the vested in-

¹⁴ 62d Cong., 1st Sess., Cong. Record, vol. xlviii, p. 4933 ff. and H. Rept. No. 163.

¹⁵ 62d Cong., 1st Sess., Hearings, S. Com. on Terr., May 23, 1911; H. Com. on Terr., May 19, 20, 24, 25, 1911; 62d Cong., 2d Sess., Hearings, Sub-Com. of Sen. Com. on Terr., May 31, 1912.

¹⁶ Ibid., House Hearings, pp. 23-26.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ 37 Stat. L., 512.

terests in Alaska,²⁰ but even so a great victory for home rule had been gained. The people of Alaska for the first time were to have a part in the making of their laws.

The Territorial Legislature as provided for in the organic Act of 1912 consists of a senate of eight members and a house of representatives of sixteen members, two senators and four representatives to be chosen from each of the four judicial divisions into which the territory is divided. Each member of the Senate serves for four years, one member from each judicial division being elected every two years. Each senator shall have at the time of his election the qualifications of an elector in Alaska, and must have been "a resident and an inhabitant of the division from which he is elected for at least two years prior to the date for his election."²¹ Each member of the house of representatives serves for a term of two years, and must have the same qualifications prescribed for members of the senate. The person receiving the highest number of legal votes in each judicial division cast for senator or representative in the division shall be declared elected to said office. In case of a tie the candidates concerned are required to settle the question by lot.²² In case of vacancy in either branch of the legislature, the Governor is empowered and required to order an election to fill the vacancy, giving proper notice thereof. Each member of the legislature is paid by the United States the sum of fifteen dollars per diem for each day's attendance while the legislature is in session, and in addition, mileage at the rate of fifteen cents per mile to and from his home to the capital by the nearest traveled route.²³

For the purpose of electing these representatives no political divisions, other than the four judicial divisions, have been established by law in Alaska. Thus the eight senators and sixteen representatives of the Alaskan legislative assembly are

²⁰ 62d Cong., 1st Sess., Hearings H. Com. on Terr., May 17, 1911, p. 17.

²¹ U. S. Comp. Stat., 1918, p. 521.

²² Ibid.

²³ Ibid.; 37 Stat. L., 513.

elected at large from the four judicial divisions, all necessity for county organization being in this way avoided. On this point Judge Wickersham stated in the hearings on the bill providing for a Territorial legislature, "We do not need county government and our people do not want it. We are not in that condition where we need to duplicate our officers."²⁴ The Senate's Committee on Territories wished to make the legislature for Alaska unicameral,²⁵ but the House forced the hand of the Senate on this point by refusing to pass the bill in that form. Thus the two bodies of the Alaskan Legislature have the same constituents, the same qualifications and the same functions.

Elections for members of the legislature are held biennially on the Tuesday after the first Monday in November of the even numbered years. The qualifications of electors, the regulations concerning the creation of voting precincts, the conduct and supervision of elections, the canvassing of the returns, etc., are set forth in the Delegate Act of May 7, 1906, which by the organic Act of 1912, were made to apply to the election of members of the legislature in so far as applicable thereto.²⁶ All citizens of the United States twenty-one years of age and over who have been bona fide residents of Alaska continuously during the entire year preceding the election, and who have been residents for thirty days preceding the election in the precinct in which they vote, are qualified to vote for members of the Alaskan Legislature.²⁷ Each incorporated town in Alaska constitutes an election district which, if the population exceeds one thousand, may be divided by the common council of the town into two or more voting precincts. All the territory in each recording district (or judicial division) situated outside of an incorporated town constitutes one election district, and the commissioner in each district is required, sixty days prior to

²⁴ 62d Cong., 1st Sess., Hearings, H. Com. on Terr., May 25, 1911.

²⁵ *Ibid.*, S. Com. on Terr., May 23, 1911.

²⁶ U. S. Comp. Stat., 1918, p. 521.

²⁷ *Ibid.*, p. 523.

an election, to issue an order dividing his district into as many precincts as he may think necessary or convenient, provided there are at least thirty qualified voters residing in each precinct.²⁸ Provision is made for the appointment of three judges of election in each precinct, who also constitute an election board for the precinct, and have charge of and supervise the elections therein, determine the qualifications of persons desiring to vote, canvass and make return of the votes cast in their precinct. Voting is further safeguarded by providing a watcher for each candidate at each voting precinct.²⁹

Voting is by secret ballot and the votes are canvassed and the results certified in duplicate by the election board in each precinct. Certificates of election in each precinct are sent by the election board to the Governor and to the clerk of the district court for the division in which the precinct is situated. The Governor, the surveyor-general, and the collector of customs for Alaska constitute a canvassing board for the whole Territory, who canvass and compile in writing the votes specified in the certificates of election returned to the Governor from the several precincts as mentioned above. Upon the completion of this canvass the board "shall declare the person who has received the greatest number of votes . . . to be duly elected, and shall issue to him a certificate of his election."³⁰

The legislature convenes biennially at Juneau, the capital, on the first Monday in March of the odd years. The duration of each session is limited to sixty days, but the Governor may call a special session which shall not continue longer than fifteen days.³¹

Upon the convening of the legislature under the law, both the senate and the house of representatives organize by the election of one of their members as presiding officer, who, in the case of the senate, is designated as "president of the senate," and, in the case of the house, as "speaker of the

²⁸ Ibid., p. 523.

²⁹ Ibid., p. 524.

³⁰ Ibid., p. 525.

³¹ 37 Stat. L., 514; U. S. Comp. Stat., 1918, p. 521.

house of representatives." Each body elects also the following subordinate officers: one chief clerk, one enrolling and engrossing clerk, sergeant-at-arms and door keeper, a messenger and watchman, and a chaplain.³²

Each house also determines its own rules of procedure, provided they are not inconsistent with the organic Act of 1912. A journal of its proceedings is kept by each house, and the "ayes" and "noes" of the members of either house on any question shall, at the request of one-fifth of the members present, be entered upon the journal. A majority of the total membership of each house constitutes a quorum for the conduct of business, of which quorum a majority vote is sufficient. A smaller number than a quorum, however, may adjourn from day to day and compel the attendance of absent members, in such manner as each house may provide.³³

In order to become a law a bill introduced in either house must have three separate readings in each house, and the final passage of the bill must, in each house, be by a majority vote of all the members to which such house is entitled, taken by the "ayes" and "noes" and entered upon its journal. When a bill has passed both houses of the legislature and has been certified by the presiding officers and clerks of both houses, it is presented to the Governor for his signature. If he signs it, it becomes a law at the expiration of ninety days from the date of signature. It may, however, be given an earlier effect by a two-thirds vote of the legislature. The Governor may veto a bill presented to him, but such a veto can be over-ridden by a two-thirds vote of the whole membership of both houses of the legislature. Of a bill which appropriates money for specific purposes, the Governor may veto any specific item or items, but he must veto all other bills, if at all, only as a whole. If he neither signs nor vetoes a bill within three days (Sundays excepted) after it is delivered to him, it becomes a law without his

³² Ibid.

³³ U. S. Comp. Stat., 1918, p. 522.

signature, unless the legislature adjourns sine die prior to the expiration of the three days.³⁴

The law requires that "the legislature shall make provision for printing the session laws and resolutions within ninety days after the close of each session and for their distribution to public officials and sale to the people of the Territory,"³⁵ and that the copy, properly certified to by the secretary of the Territory, shall within ninety days after the close of each session, be transmitted by the Governor to the President of the United States and to the Secretary of State of the United States.³⁶

Certain restrictions are placed upon, and certain privileges granted to, the members of the Alaskan legislature. No member may hold, during the term of his office and for one year thereafter, any office other than the one to which he has been elected, and "no person holding a commission or an appointment under the United States shall be a member of the legislature or shall hold any office under the government of said Territory."³⁷ Members of the Territorial legislature are given substantially the same privileges that are usually accorded members of the state legislatures and those of the National Congress, such as freedom of speech on the floor of the house, and freedom from arrest, except in cases of treason, felony, or breach of the peace, during their attendance upon the sessions of their respective houses, and in going to and returning from the same, provided that the privileges as to going and coming shall not cover a period of more than ten days each way, except in the second and fourth judicial divisions.³⁸ The members are also entitled to a salary annually appropriated by Congress.³⁹

A perusal of the law regarding the powers of the Territorial legislature of Alaska is apt to give one the impression that, after all, Congress did not intend to grant to the Territory any real legislative power. Section 9 of the organic

³⁴ *Ibid.*, p. 522.

³⁵ *Ibid.*, p. 523.

³⁶ *Ibid.*, p. 523.

³⁷ *Ibid.*, p. 522.

³⁸ *Ibid.*, p. 522.

³⁹ *Ibid.*, p. 522.

Act of 1912 provides that, "The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States."⁴⁰ Obviously no wider grant of power than this could be made to any territory belonging to the United States, but there immediately follows an extended list of limitations upon this general grant of legislative power which would seem almost to rob it of its real force. Before attempting to answer the question, what may the Territorial legislature of Alaska do? it will be well to state briefly what it may not do. It may not pass any law interfering with the primary disposal of the soil; it may not levy taxes that are not uniform upon the same class of subjects; it may not grant any exclusive or special privileges without the affirmative approval of Congress; it may not legalize lotteries or gambling; it may make no provision respecting the manufacture or sale of spiritous or intoxicating liquors; it may not authorize bonded indebtedness or the creation of any debt by the Territory or municipalities thereof; it may not appropriate any public money for the benefit of any sectarian or denominational school, or any school not under the exclusive control of the Government; it may not authorize the extension of the credit of the Government of the Territory, or any subdivision thereof, to any incorporated company; it may not create or assume any indebtedness for the actual running expenses of the Territorial Government in excess of the actual income of the Territory for a given year; it may not levy any tax for Territorial purposes in excess of one per centum upon the assessed valuation of property, nor within the incorporated towns in excess of two per centum; it may not pass any law providing for the formation of county government within the Territory without the affirmative approval of Congress; it may not "alter, amend, modify or repeal" the "game" and "fish" laws passed by Congress and in force in Alaska.⁴¹ This last restriction upon the powers of

⁴⁰ Ibid., p. 521.

⁴¹ Ibid., pp. 520, 521-522.

the Territorial Legislature has been one of the most objectionable. This provision, however, does not mean that the Territorial legislature may not pass any law for the protection of game and fish. It simply may not change the laws of Congress already in force relating to these subjects, but the law has a proviso to the effect that "This provision shall not operate to prevent the legislature from imposing other and additional taxes or licenses."⁴²

Do these limitations leave any field for the exercise of power on the part of the Territorial legislature? In short, what may this legislature do? It may alter, amend, or repeal any part of the Alaska Codes, both civil and criminal; it may impose road and poll taxes; it may legislate upon such subjects as quarantine, sanitation, public health, supervision of banks, registration of births, marriages and deaths, compulsory school attendance, relief of destitution, insurance, regulation of manufacturing, mining and other industrial corporations, and generally for the purpose of protecting the civil and religious liberties of the citizen.⁴³

But even these powers are conditional, and this statement brings us to a consideration of the status of the Legislature of Alaska in its relation to Congress. The Constitution of the United States has placed the supreme legislative power over Alaska and all other territories belonging to the United States in the Congress,⁴⁴ and Congress itself, therefore, could not, if it desired, confer any exclusive power of legislation upon Alaska. The Territorial legislature is then nothing more than an agent of Congress to whom the latter body has granted a limited portion of its power which is to be exercised always at the sufferance of Congress. Congress has the power to legislate directly with respect to all subjects over which it has given the Territorial legislature power. It may repeal any act of this legislature, or indeed

⁴² Ibid., p. 520.

⁴³ Ibid., p. 521; Speech of Hon. James Wickersham, before Joint Session, First Alaska Territorial Legislature, Juneau, March 10, 1913.

⁴⁴ Art. IV, Sec. 3.

the Act creating it. Just as Congress was under no constitutional obligation to create the territorial legislature, so it is under no constitutional obligation to continue its existence or to recognize any of its acts. It must then be said that all fundamental or primary legislative authority over Alaska belongs to Congress.

The powers of the territorial legislature, though subject to withdrawal at the discretion of Congress, are, while they exist and are exercised in accordance with the organic act, as valid and constitutional as those exercised by Congress itself. Thus there is in Alaska as in other territories, a dual legislative power exercised by the Congress and by the territorial body. The powers of the Congress are primary and fundamental; the powers of the legislature are secondary and subordinate. Only the former body can give life and vitality to the acts of the latter.

The granting of this territorial legislature to Alaska marked the most important step in her political development, and no one will gainsay the statement that it had more than a political significance. Yet something more is necessary for the solution of the problems which confront Alaska at this time. The development and the conservation of her great resources are still to be accomplished, and for this she is dependent upon the action of Congress to provide a more efficient administration. This problem will furnish the subject of the following chapter of this discussion.

CHAPTER VI

ADMINISTRATION: FEDERAL AND TERRITORIAL

The administration of governmental affairs in Alaska is at the present time divided between the Federal and the Territorial authorities. Inasmuch as practically all of the land and the natural resources of this Territory are still the property of the United States,¹ this discussion will be confined, for the most part, to the administrative activities of the Federal authorities in Alaska. The purpose then of the present chapter will be to set forth briefly the activities and method of operation of the more than thirty Federal bureaus that project their tentacles into Alaska, and to offer some criticism of this system in the light of the needs of the Territory.

The Federal control in the Territory is maintained and exercised through bureaus acting under the department heads in Washington, at a great distance from the actual scene of action. The various executive departments are represented in Alaska as follows:

1. *Department of Agriculture*.—This department is represented by the Forest Service, the Biological Survey, the States Relation Service, the Bureau of Animal Industry, the Weather Bureau, and the Bureau of Public Roads.

The Forest Service administers the national forests. The chief administrative officer in Alaska is the district forester with headquarters at Juneau. Branch headquarters are maintained at several other towns on the southern coast of the Territory. In the Chugach and Tongass National Forest, with a combined area of more than twenty-five million acres, the Forest Service controls, in conjunction with the General Land Office, the timberlands, mineral lands, townsites, trade

¹ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 110.

and manufacturing sites, surveys, homestead entries, coal leases, oil leases, Indian allotments, cemeteries, wharf sites, church and school sites, rights of way, mission sites, roads, timber sales, fur farm leases, school reservations, water power, and the national forest, jointly with the Alaskan Engineering Commission, lying in the Government railway right of way. It also has the management of Annette Island reservation in connection with the Bureaus of Education and Fisheries, and of the Abognak Island reservation in conjunction with the Fisheries Bureau.²

The Bureau of Biological Survey has charge of bird reservations, and controls scientific investigation and experiments in the propagation and development of animal life. It is also responsible for the administering of laws on migratory birds, game, and game reservations. Prior to July 1, 1924, Alaska's game and fur had been protected by two different departments of the Government, through the agency of separate personnels, acting under the authority of separate acts of Congress. By a joint resolution approved on June 7, 1924, and effective July 1, 1924, the wild life protective work in Alaska was consolidated by placing both the game and fur under the Biological Survey. According to the report of the Governor for the fiscal year ending June 30, 1925, this consolidation has resulted in greater efficiency of administration.³

A decided step in the improvement of game administration was taken in the Act of January 13, 1925.⁴ This law provides for an Alaska Game Commission composed of five members, all residents of Alaska, whose duty it is to formulate regulations that are submitted to the Secretary of Agriculture for promulgation by him. The Commission has au-

² 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, pp. 112, 184, 242, 492; Annual Rept., Secretary of Interior, 1925, p. 62; Report of Governor to Sec. of Interior, 1925, pp. 39, 71; U. S. Comp. Stat., Cum. Supp. 1925, pp. 351-357.

³ Rept. of Governor to Sec. of Interior, 1925, p. 45; U. S. Comp. Stat., 1925, Cum. Supp., p. 251, sec. 3621aa.

⁴ U. S. Comp. Stat., 1925, Cum. Supp., p. 252, sec. 3621 aa-4.

thority, however to promulgate certain regulations on its own initiative. Under this law practically the entire administration of game laws is carried on by the executive officer of the Commission with headquarters at Juneau. The Act gives almost absolute protection to all birds, land fur-bearing animals and game animals, and not only prohibits the killing of them but also prohibits attempts to take, kill, capture, possess or transport protected birds and animals, except as permitted by regulations promulgated in accordance with authority conferred by the Act. The provisions of the Act are such that the regulations can be modified from time to time as changes in conditions make necessary.⁵

The States Relation Service has charge of agricultural experiment stations that are maintained for the encouragement of agriculture by scientific experiment and original researches in the physiology of plants and animals; the diseases to which they are subject, with the remedies for the same, etc. These stations make demonstrations of farming methods, crop rotation, and cattle breeding. The Secretary of Agriculture is authorized to sell crops grown on experimental farms for the purpose of establishing and maintaining such stations and for other necessary expenses in connection therewith.⁶

The Bureau of Animal Industry⁷ has a certain control over the reindeer herds which are under the general charge of the Bureau of Education and which are also under investigation by the Biological Survey.⁸

The Weather Bureau carries on observations in Alaska in the same manner as in other parts of the United States.⁹

The Bureau of Public Roads is one of the three principal road building agencies in Alaska, the other two being the Alaska Road Commission of the War Department, and the

⁵ Ibid., p. 253; Rept. of Gov. to Sec. of Interior, 1925, p. 46.

⁶ See U. S. Comp. Stat., 1918, pp. 1444-1446; 1925, Cum. Supp., p. 35, sec. 832bb; 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 184.

⁷ U. S. Comp. Stat., 1918, p. 109.

⁸ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 184.

⁹ Ibid.

Territorial Road Commission. The activities of the Bureau of Public Roads are confined to the area within, or adjacent to, the national forests.¹⁰ This bureau receives its funds from appropriations made under the Federal road acts of 1916, 1919, 1921, 1923, and certain cooperative funds contributed by the Territory.¹¹

2. *Department of Commerce.*—This department is represented by the Bureau of Fisheries, the Coast and Geodetic Survey, the Bureau of Lighthouses, the Steamboat Inspection Service, the Bureau of Navigation, and the Census Bureau.

The Bureau of Fisheries, under the authority and direction of the Secretary of Commerce, has charge of the protection and conservation of the fisheries in the waters of Alaska over which the United States has jurisdiction. The jurisdiction of the Secretary of Commerce over the fur seals and sea otter on the Pribiloff Islands is exercised through this bureau. The Department of Commerce, however, no longer has any jurisdiction over land fur bearing animals in Alaska.¹² A marked improvement in the protection and conservation of Alaskan fisheries was provided by the Act of June 6, 1924.¹³ By this Act the Secretary of Commerce is given authority to reserve fishing areas in the waters of Alaska under the jurisdiction of the United States, and, within such areas, to establish closed seasons during which fishing may be limited or prohibited in any manner that he may prescribe by regulation, provided such regulation is of general application within the area to which it applies, and that no exclusive right of fishing is granted therein.¹⁴ Prior to the passage of this Act the fishing business in Alaska was declared to be in danger of depletion owing to overfishing,¹⁵ but under the

¹⁰ Rept. of Governor to Sec. of Interior, 1925, p. 16; see also, General Information Regarding the Territory of Alaska, Dept. of Interior, 1922, p. 52.

¹¹ U. S. Comp. Stat., 1925, Cum. Supp. sec. 7477¼v.

¹² Ibid., p. 700.

¹³ Ibid., pp. 255-256.

¹⁴ Ibid., sec. 3622¼.

¹⁵ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 422.

present Act with its more effective method of enforcement, this industry gives promise of a renewed development.¹⁶ A much expanded patrol is now maintained by the Bureau of Fisheries in all fishing districts, and for the purpose of enforcing the fisheries law all employees of the Bureau of Fisheries, designated by the Commission of Fisheries, are peace officers and have the same powers as United States marshals.¹⁷

The Coast and Geodetic Survey makes hydrographic surveys and maps the waters along the coasts of Alaska just as all along the shores of the United States. According to the report of the governor for 1925, excellent work in the location of obstructions to navigation has been done by the Coast and Geodetic Survey, "whose work is essential for the protection of life, and property, as of the many resources of Alaska."¹⁸

The Light House Service establishes and maintains aids to navigation in the Territory. It constructs and maintains light houses, buoys, fog and light signals along the coast.¹⁹

The Steamboat Inspection Service issues licenses to ships and officers thereof, and inspects the boilers, hulls, etc., of steam vessels.²⁰

The Bureau of Navigation makes and enforces navigation rules and regulations, and conducts the registry of vessels through the Customs Service.²¹

The Bureau of the Census, through the Educational Bureau, takes the decennial census in Alaska.²²

3. *War Department.*—The work of this department in the Territory of Alaska is carried on chiefly through the En-

¹⁶ Rept. of Governor, 1925, p. 20.

¹⁷ U. S. Comp. Stat., 1925, Cum. Supp., sec. 3622½d. For present state of Alaska fisheries, see, 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, pp. 208, 219, 356, 422; Annual Rept., Sec. of Interior, 1925, p. 61; Rept. of Governor, 1925, pp. 20-26.

¹⁸ Rept. of Governor, 1925, p. 47.

¹⁹ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, pp. 112, 185.

²⁰ Ibid.

²¹ Ibid.

²² U. S. Comp. Stat., 1918, Secs. 4385, 4393.

gineer Corps, the Alaska Road Commission, and the Signal Corps.

The Engineer corps has charge of surveys, river and harbor improvements, and, in conjunction with the Land Office and Forest Service, controls the water power and tidelands within the national forests. An advanced step in the method of handling river and harbor improvements was taken on April 1, 1921, with the establishment of the Juneau engineer district by the Chief of Engineers. The president of the Alaska Road Commission was appointed district engineer, with the other two members of this commission acting as his military assistants. Important river and harbor improvements have been and are being made in Alaska under this new system. In conjunction with the Bureau of Fisheries this engineer district has jurisdiction over fish traps, and performs important functions of the Federal Government in connection with the issue of permits for the construction of bridges, wharves and other structures over navigable waters.²³

The Alaska Road Commission has charge of the building of roads and trails in the Territory. This commission, which was created by an act of Congress approved January 27, 1905, as amended May 14, 1906, is composed of three officers of the Army, who are required to report to the War Department through the chief of Engineers.²⁴ The Federal funds disbursed for the construction of bridges, roads, and trails are made available under appropriations made by Congress for "Construction and maintenance of roads, bridges and trails, Alaska"; from the Alaska fund, which comprises moneys collected for certain licenses in Alaska, and paid into the Treasury of the United States, the larger portion of which goes to the "Construction and maintenance of wagon roads, bridges, and trails" in the Territory,²⁵ and from appropriations made for roads and trails in the National Parks. In addition to these Federal funds, the Territory allots cer-

²³ Rept. of Governor, 1925, p. 52.

²⁴ U. S. Comp. Stat., 1918, sec. 3594, p. 533.

²⁵ *Ibid.*, sec. 3592.

tain funds for disbursement by the Alaska Road Commission, under a cooperative plan for road construction to be discussed presently.

This commission has performed a great service in opening up Alaska to development. The total length of roads and trails constructed or maintained by it approximates 10,000 miles.²⁶ Without these roads the Alaska railroad would be of little value, since they form the necessary connecting links to, or feeders for, the railroad.²⁷

Under the direction of the Alaska Road Commission is also the administration of the Sitka National Cemetery, the only national cemetery in the Territory.²⁸

The business of road building and maintenance, in so far as supported by appropriations by the Territorial legislature, is carried on under the direction of the Territorial board of road commissioners, consisting of the Governor of Alaska as its chairman, the secretary of Alaska, the treasurer of Alaska, and the Territorial highway engineer. The work of this board is prosecuted under the provisions of the Territorial cooperative road act of April 21, 1919, amended May 3, 1923. The Territory is divided into four road districts corresponding to the judicial divisions, with a divisional commission in each, consisting of a chairman-secretary appointed by the Territorial board and two advisory elected members. Under this act a large portion of the Territorial road funds are allotted to cooperative projects with the Alaska Road Commission and the United States Forest Service, the balance being expended under the direction of the divisional chairmen.²⁹ All Territorial road funds are supervised by the president of the Alaska Road Commission in his capacity as director of public works for the Territory.³⁰

The Signal Corps is responsible for the construction, main-

²⁶ Rept. of Governor, 1925, p. 15.

²⁷ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 377.

²⁸ Rept. of Governor, 1925, p. 15.

²⁹ Alaska Session Laws, 1923; Rept. of Governor, 1925, p. 17.

³⁰ Ibid.

tenance, and operation of the cable to Alaska, the inland telegraph lines, and the wireless stations. The original Alaskan Cable system was completed in 1904, and in October, 1924, a new cable was completed. The building of this cable contributed much to the settlement and development of the Territory.

The value of the traffic handled by the cable increased from \$26,977.69 during the first year of its operation to \$408,837.32 during the fiscal year 1924.³¹ The Washington-Alaska Military Cable and Telegraph System operated by the Signal Corps, consists of nearly 3,000 miles of submarine cables, and nearly 1,200 miles of land wire. This system is available for commercial as well as Government use, and handles day messages, night messages, night letters, and press matter in the same manner as telegraph companies throughout the United States. It also maintains a money transfer system.³² All the more important towns are provided with messenger delivery service, such as is found in cities and towns of similar size and importance in the United States.³³

4. *The Navy Department.*—Through the Bureau of Operations, the Navy Department has charge of the naval patrol along the coast of the Territory, maintains buildings and coaling stations, sends vessels on special cruises, and makes tests of coal for steaming purposes.³⁴ Through the Naval Radio service, this department maintains and operates wireless telegraph and radio stations along the coast of the Territory, and in this way insures communication with shipping in the waters contiguous to the coast, and supplements the rapid communication facilities for the Territory by affording service to communities out of touch with the army cable. A

³¹ Rept. of Governor, 1925, p. 42.

³² General Information regarding the Territory of Alaska, 1922, Dept. of Interior, p. 53.

³³ Rept. of Governor, 1925, pp. 41-44.

³⁴ Annual Rept., Dept. of Interior, vol. ii, p. 507; see also 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 185.

considerable portion of the business of the naval radio stations in Alaska is commercial.³⁵

5. *The Post Office Department.*—This department controls the mail service in the Territory, including Railway Mail Service, postal routes, and the post offices. The transportation of mails in Alaska is under the supervision of the superintendent of the Railway Mail Service at Seattle, Washington, with assistant chief clerks stationed at Seward and Nenana.³⁶ All mails for Alaska are dispatched from Seattle. During the warm season of navigation all classes of mail are forwarded from this point without discrimination, but in winter, on account of the difficulties of transportation the dispatch of mail from Seattle is somewhat limited, preference being given to letters and postal cards, to newspapers and magazines addressed to public libraries and newspaper publishers.³⁷ The domestic rates of postage apply to all first, second, and third class matter mailed at any point in Alaska to any other point within the Territory, or to any point in the United States or its other possessions. There are at the present time about one hundred and seventy-five post offices in Alaska.³⁸ The Post office Department also has charge of the export of furs by mail for the Fisheries Bureau.

6. *The Department of Labor.*—Through the Bureau of Immigration,³⁹ this department has charge of the enforcement of immigration laws in the Territory.

7. *The Department of Justice.*—The courts and officers thereof in Alaska are controlled by the Department of Justice, which in general supervises the administration of law and justice in the Territory. The operation of this department, having been fully treated in chapter four of this study, need only be mentioned here.

³⁵ Rept. of Governor, 1925, pp. 44-45.

³⁶ Ibid., p. 53.

³⁷ General Information regarding the Territory of Alaska, Dept. of Interior, 1922, p. 58.

³⁸ Rept. of Governor, 1925, pp. 94-96.

³⁹ For Immigration laws of U. S., see U. S. Comp. Stat., 1918, pp. 632-652.

8. *The State Department.*—This department is represented in Alaska by the Boundary Commission, which has charge of the boundary survey,⁴⁰ and by the Consular Bureau, under which are the six foreign consuls in Alaska.⁴¹

9. *The Treasury Department.*—The operations of this department in Alaska are conducted through the Coast Guard Service, the Customs Service, the Supervising architect, the Comptroller of the Currency, and the Public Health Bureau.

The Coast Guard Service operates revenue cutters and the Coast Guard patrol along the waters of the Territory.⁴² This service performs important functions relating to the health of the natives, to matters of communication, and to the enforcement of the Alaska game law.⁴³

The Customs Service collects the customs revenue, looks after the registry of ships for the Department of Commerce, and has charge of certain government buildings in the Territory.⁴⁴ It will be recalled that the first law ever extended to Alaska by the United States was the Customs Act of July 27, 1868,⁴⁵ extending over the Territory the laws of the United States with reference to customs, commerce and navigation, and constituting it a customs collection district. Under this act important powers of regulation were conferred upon the Secretary of the Treasury. Under the present law the collector and deputy collectors of customs for Alaska are charged with important functions in addition to the collection of customs. The collector of customs acts as a member of the canvassing board for canvassing the returns of Territorial elections.⁴⁶ The collector and deputy collectors assist in the

⁴⁰ U. S. Comp. Stat., 1918, sec. 6795a, p. 1084.

⁴¹ Rept. of Governor, 1925, p. 112.

⁴² U. S. Comp. Stat., 1918, p. 1335.

⁴³ U. S. Comp. Stat., 1925, Cum. Supp., p. 252; see also General Information regarding The Territory of Alaska, Dept. of Interior, 1922, p. 60.

⁴⁴ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 185.

⁴⁵ 40th Cong., 2d Sess., S. 619.

⁴⁶ U. S. Comp. Stat., 1918, p. 525.

enforcement of the law relating to fur bearing animals,⁴⁷ and the recent game law.⁴⁸

The Supervising architect is intrusted with the duty of general oversight over the construction of public buildings in the Territory.

The Comptroller of the Currency has the supervision of the four national banks doing business in the Territory.⁴⁹ The Treasury Department also controls the collection of internal revenue income tax, Alaska fund, business and trade licenses in towns, and other forms of Federal revenue in the Territory.⁵⁰

It should be pointed out here that the Territory has its own fiscal system, which is separate and distinct from the revenue received by the Federal Government, and controlled by laws enacted by the Territorial legislature.⁵¹ Under these laws license taxes are imposed upon numerous trades, businesses and professions. In addition to license taxes the Territory receives one per cent of the gross receipts of railroads, twenty-five per cent of the receipts of the national forests in the Territory, and a poll tax, for school purposes, of five dollars per annum on all men between the ages of twenty-one and fifty years.⁵² The legislature has imposed license taxes on fur farming, trapping and trading,⁵³ and on fishing.⁵⁴

The Public Health Bureau controls quarantine and makes public health regulations. The Territory also has its own public health service under the direction of its Commissioner of Health. While some progress has been made in matters of health and sanitation in the Territory, it appears from reports that a vast amount remains to be done. The governor's annual report of 1925 states that, "Areas containing thousands of natives never have seen a physician and in matters of sanitation are still in the stone age."⁵⁵

⁴⁷ Ibid., 1918, p. 1439.

⁴⁸ Ibid., 1925, Cum. Supp. p. 255.

⁴⁹ Ibid., 1918, p. 1568 ff.

⁵⁰ Ibid., 1918, p. 531; 30 Stat. L., 1336.

⁵¹ Session Laws of Alaska, 1921, chap. xxxi.

⁵² Ibid.; also Rept. of Governor, 1925, p. 68.

⁵³ Session Laws of Alaska, 1923, chap. lxxxix.

⁵⁴ Ibid., chap. xlv.

⁵⁵ Rept. of Governor, 1925, p. 76.

10. *Department of Interior.*—It is upon this department that the burden of Federal administration in Alaska centers. It is represented in the Territory by the following offices and services.

(1) The governor, who is appointed by the President, with the advice and consent of the Senate, is "charged with the interests of the United States Government within" the Territory. To this end he is charged with the duty of the enforcement of the laws enacted for the Territory and to require the faithful performance of duty by the officials appointed to administer the law. He may grant reprieves for offences against the laws of the Territory or of the United States, subject to subsequent decision by the President. He is *ex officio* commander of the militia of the Territory, and has the power to call out the same when necessary to the execution of the laws and the preservation of peace. He issues the commissions of notaries public under Federal laws, and has a general oversight over the Territory. He is required to make to the President of the United States an annual report of his official acts and doings, and of the state of the Territory with reference to its resources, industries, population and the administration of civil government.⁵⁶ This report is made through the Secretary of Interior. Most of the above powers amount to little, because of the fact that the governor is not provided with the agencies to carry them out.

(2) The General Land Office controls the surveys of public lands; receives the entries, issues the patents for, and makes disposal of the public domain in the Territory, including homesteads, mill sites, mineral claims, trade sites, cemeteries, Indian allotments, church and school sites, wharf sites, town sites, coal and oil leases, and water and power sites outside the national forests. It also handles the returns and the accounts of the Surveyor General's office, which, under in-

⁵⁶ U. S. Comp. Stat., 1918, pp. 525-526.

struction from the Land Office, conducts surveys of public lands in Alaska.⁵⁷

As has been previously pointed out, the general land laws of the United States were withheld from Alaska in the organic Act of 1884, and thus no settler could acquire title to land for the purpose of making a homestead. Perhaps nothing stood so much in the way of the economic, social, and political development of this Territory as the withholding therefrom of these laws.

It was not until 1898 that the first step was taken by Congress in extending the homestead laws of the United States to Alaska.⁵⁸ These laws are now, however, in force in the Territory, except as modified by the Act of 1898 and subsequent acts to meet local conditions.⁵⁹

For the purpose of administering the land laws the Territory is now divided into three land districts with local offices at Anchorage, Fairbanks, and Nome. The Governor in his last report suggests that the administration of the land office work would be greatly facilitated if the boundaries of the land districts were made to conform to those of the judicial divisions.⁶⁰ A homestead claim may be initiated by any person having the qualifications required of an applicant for land in the United States and a homestead entry made in the United States does not disqualify him. He may under the present law enter no more than 160 acres,⁶¹ but a claim initiated under the old law, that is prior to July 8, 1916, for as much as 320 acres, may still be perfected.⁶² In case the land is not covered by public surveys, the claim must be located in rectangular form, not more than a mile long, located by lines running north and south, according to the true meridian, the four corners being marked by per-

⁵⁷ *Ibid.*, pp. 759-771; 67th Cong., 1st Sess., see also Hearings, H. Com. on Terr., on H. R. 5694, pp. 183-184.

⁵⁸ 30 Stat. L., 409.

⁵⁹ 32 Stat. L., 1028; 39 Stat. L., 352; 40 Stat. L., 630; 41 Stat. L., 1059; 41 Stat. L., 1363; 42 Stat. L., 416.

⁶⁰ Rept. of Governor, 1925, p. 37.

⁶¹ U. S. Comp. Stat., 1925, Cum. Supp., p. 348.

⁶² *Ibid.*, 1925, Cum. Supp., p. 348.

manent monuments. The claimant must post on the land a notice of his location, and within ninety days after settlement thereon, file a copy of the location with the commissioner of the recording district in which the land is situated.⁶³ The location notice should contain such information regarding the land as will serve to identify it. In accordance with an Act of Congress approved June 28, 1918, if a homesteader files with the register and receiver of the district in which his claim is situated an affidavit, corroborated by two witnesses, showing that he is in position to submit final proof, acceptable as to residence, cultivation and improvements, the surveyor-general will be advised, and will, not later than the next surveying season, issue instructions for the survey of the land, without expense to the entryman who may thereafter submit final proof as in the case of similar entries of surveyed lands.⁶⁴ This legislation, however, does not prevent a homesteader from procuring a special survey at his own expense, by a regularly appointed deputy surveyor, in accordance with the old law, if he so desires.⁶⁵

A homestead entryman must show residence upon his claim for at least three years. He is, however, entitled to absent himself during each year for not more than two periods making up an aggregate of five months, giving written notice to the local land office of the time of leaving the homestead and returning thereto. He must show cultivation of a certain portion of the land during the second and third years and until submission of proof, and must have a habitable house upon the land at the time proof is submitted. An entry may be commuted, after showing fourteen months residence, cultivation of one-sixteenth of the area of the land, and the payment of \$11.25 per acre. Residence must be established upon the claim within six months after the date of entry or the recording of the location notice.⁶⁶

⁶³ Ibid., 1918, sec. 5046.

⁶⁴ Ibid., 1925, Cum. Supp., sec. 5046aa.

⁶⁵ Ibid.

⁶⁶ Circular No. 491, Dept. of Interior (General Land Office).

By the act of March 8, 1922, provision was made for homestead entries on coal, oil, and gas lands in the Territory of Alaska. Since Congress authorized the extension of the rectangular system of public land surveys to Alaska, it is estimated that over 1,550,000 acres have been brought under survey. All of these surveys have been confined to known agricultural areas, the coal fields and such adjoining lands as might be attractive to settlers, and does not represent all of the lands in Alaska that have been actually surveyed, such as special surveys of townsites, native allotments, trade and manufacturing sites, and homestead entry claims.⁶⁷

No homestead entry outside of a national forest may extend more than 160 rods along the shore of a navigable water, and along such shores a space of at least eighty rods must be reserved between claims, unless such restrictions and reservations are waived by the Secretary of the Interior under authority of the act of June 5, 1920.⁶⁸

Since an act of March 8, 1922, homestead claims may be initiated by actual settlers on public lands in Alaska known to contain workable coal, oil or gas deposits, not otherwise reserved or withdrawn, provided title to the coal, oil, or gas in such lands is reserved to the United States, with the right to prospect for, mine and remove the same.⁶⁹

(3) The Geological Survey makes topographical and geological surveys in the Territory, investigates mineralized areas and water supplies and makes geological maps.⁷⁰

(4) The Bureau of Mines is responsible for the enforcement of the mining laws, the inspection of mines and mining, and the management of the mines experiment stations. It has charge of the coal reserves and supervises the mining of

⁶⁷ General Information regarding the Territory of Alaska, Dept. of Interior, 1922.

⁶⁸ 41 Stat. L., 1059. For the hardships and inconveniences experienced prior to this law, see H. Rept. No. 760, 65th Cong., 2d Sess.

⁶⁹ U. S. Comp. Stat., 1925, Cum. Supp., sec. 5078s, p. 349.

⁷⁰ Rept. of Governor, 1925, pp. 27-31; 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 183.

coal.⁷¹ For the purpose of aiding in the development of the Territory's mineral resources, there has recently been organized a field force of the Bureau of Mines, including one supervising mining engineer, who is ex officio Federal mine inspector; one coal-mining engineer; and two lode-mining engineers, designated, respectively, associate mining engineer and metal mining assistant.⁷² Since January 1, 1923, the Bureau of Mines has had charge of the sampling and testing of all coal purchased by the Alaska Railroad.⁷³

(5) The Bureau of Education, through its Alaska division, makes provision for the education of the natives of the Territory and provides for them medical relief, trains them in the industries, and relieves, in so far as possible, worthy cases of destitution.⁷⁴ This work in Alaska is under the direct supervision of the chief of the Alaska division, with headquarters in Seattle, Washington. The Seattle office acts as a purchasing and disbursing agent for all the activities of the bureau in Alaska, and selects teachers and other personnel to recommend to the Commissioner of Education for appointment.⁷⁵

The regulations governing the native school system allow the greatest freedom of action on the part of the local employees that is consistent with the ultimate responsibility of the Commissioner of Education. Each of the four school districts is under the immediate charge of a district superintendent who has almost absolute control of the work of the Bureau of Education in his district and he in turn delegates to the teachers the greatest possible freedom of action in the local affairs of the school.⁷⁶ The administration of much of the work in connection with the native schools involves great difficulties, arising chiefly from the

⁷¹ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, p. 183.

⁷² Rept. of Governor 1925, p. 32.

⁷³ Ibid., p. 37.

⁷⁴ U. S. Comp. Stat., 1918, p. 536; 1925, Cum. Supp., p. 250.

⁷⁵ Rept. of Governor 1925, p. 61.

⁷⁶ Bulletin No. 36, Bureau of Education, Dept. of Interior, 1913.

remoteness of most of the villages, the great distances between them, the limited means of communication, and the severity of the climate in many sections. Most of the natives are a seafaring people, scattered along thousands of miles of coast and on the great rivers. Many of the settlements are far beyond the limits of transportation and regular mail service, and one-third of the native population is north of the Arctic Circle. It is, therefore, not surprising that statistics show that educational opportunity has been provided for only about 44 per cent of the natives, and medical relief to an even smaller proportion.⁷⁷

During the last fiscal year eighty-five native schools were operated in Alaska, with one hundred and fifty-four teachers employed, including superintendents and principals. These teachers are not only engaged in strictly educational activities, but in many cases are responsible for the relief of destitution, medical supervision about the village, and supervision of the industries, including the reindeer. They inspect houses, and give instruction in healthful methods of living. Five hospitals are maintained through the Alaska division of the Bureau of Education at as many centers of native population, with a staff of physicians and surgeons, nurses, cooks and orderlies. There is need for larger appropriation of funds for improvement in health and sanitation among these natives.⁷⁸

Doubtless the most important enterprize of the Bureau of Education undertaken for the natives of Alaska is the reindeer service. Reindeer were first introduced into Alaska from Siberia in 1891, through the enterprising efforts of Dr. Sheldon Jackson, at that time in charge of the bureau's work in Alaska. The reindeer service has become an integral part of the educational system for northern and western Alaska, administered through the school superintendents and teachers in those regions.⁷⁹ There are now in Alaska, it is

⁷⁷ Rept. of Governor, 1925, p. 62.

⁷⁸ Ibid., pp. 63-64.

⁷⁹ General Information regarding the Territory of Alaska, Dept. of Interior, 1922.

estimated, about 300,000 reindeer, two-thirds of which belong to the Eskimos.⁸⁰ This industry now produces considerable wealth, and is a great civilizing agency among the natives of the Territory.

Industrial education in the ordinary day schools for the natives in Alaska supplements the more academic work of the schools. The study of animal husbandry, home economics, and manual training, serves to make more skillful and efficient citizens.⁸¹ Provision has been made for special industrial schools which are now in the process of organization for the purpose of affording vocational training for the aboriginal native people of the Territory.⁸²

Schools for white children and children of mixed blood who lead a civilized life in the Territory are under the general supervision of a Territorial Board of Education, authorized by the Legislature of Alaska in pursuance of an act of Congress approved March 3, 1917.⁸³ The Governor of Alaska is *ex officio* superintendent of public instruction,⁸⁴ but the real supervision and direction of the schools is vested in the Territorial board consisting of five members of whom the governor is *ex officio* chairman, with a commissioner of education chosen by them as chief executive officer. This officer, with the approval of the board, prescribes rules and regulations for the general government of the schools.

These schools are of two classes: schools in incorporated towns, and schools outside incorporated towns. Within incorporated towns school districts are established by the common council, but when established they are under the supervision and control of a school board of three members elected annually by the vote of all adults who are citizens of the United States or who have declared their intention to become such and who are residents of the school district.⁸⁵ Outside

⁸⁰ Rept. of Governor, 1925, p. 65.

⁸¹ *Ibid.*, p. 66.

⁸² *Ibid.*; U. S. Comp. Stat., Cum. Supp., 1925, p. 250.

⁸³ U. S. Comp. Stat., 1918, sec. 3607a.

⁸⁴ *Ibid.*, sec. 3603.

⁸⁵ *Ibid.*, sec. 3604, p. 534.

incorporated towns school districts are established by the clerk of the district court upon petition of not less than eight persons of adult age who are citizens of the United States or have declared their intention of becoming such and who reside within the proposed district. These districts shall not embrace more than forty square miles of territory nor contain less than ten resident white children between the ages of six and seventeen years. The schools in each of these districts are managed by a board with similar powers to the boards in incorporated towns.⁸⁶ Schools known as cooperative schools are provided for communities which have fewer children of school age than is required by law for the regular school districts.⁸⁷

The Territorial schools are supported largely from the Territorial treasury, together with 25 per cent of the Alaska Fund,⁸⁸ which consists of a variety of Federal taxes collected in Alaska and which nets the schools about \$50,000 a year. This fund, however, does not apply to schools in incorporated towns. Twenty-five per cent of the cost of maintaining schools in incorporated towns is borne by the local school district and seventy-five per cent by the Territory, up to a maximum of \$20,000 annually to a single district.⁸⁹ Part of these funds are derived from license taxes laid by the Federal Government and covered into the municipal treasuries for the use of the municipalities.⁹⁰ Schools outside incorporated towns are supported entirely from appropriations which are disbursed through the governor's office, consisting chiefly of the twenty-five per cent portion of the Alaska fund.⁹¹

During the year 1924-1925 seventeen schools, including elementary and high schools, were maintained in the incorporated towns, with a total enrollment of 2,822. During the same period schools were maintained in fifty-six districts

⁸⁶ Ibid., sec. 3605.

⁸⁷ Rept. of Governor, 1925, pp. 54, 57.

⁸⁸ U. S. Comp. Stat., 1918, sec. 3592.

⁸⁹ Rept. of Governor, 1925, pp. 54, 69.

⁹⁰ Annual Reports, Dept. of Interior, 1915, vol. ii, p. 501.

⁹¹ Rept. of Governor, 1925, p. 69.

outside incorporated towns, with a total enrollment of 1,289.⁹²

In addition to the above schools, night schools for the training of foreigners for citizenship are maintained in ten communities,⁹³ and the Alaska Agricultural College and School of Mines was established in 1922 near Fairbanks. This latter institution is supported partly by Territorial and partly by Federal funds and is closely associated with the Bureau of Mines.⁹⁴ This institution is of collegiate rank, but is available for the training of those who have not completed a secondary education.

(6) The National Park Service has control over the national parks and national monuments of the Territory.⁹⁵

(7) The "Alaska Railroad," formerly known as the Alaskan Engineering Commission, has charge, under the direction of a general manager, of all activities of construction, maintenance and operation of the Government railway in the Territory.⁹⁶ The novelty of this venture on the part of the United States will justify a brief account of the construction of this railroad. In the special session of Congress held in the spring and summer of 1913, there was introduced "a bill to authorize the President of the United States to locate, construct, and operate railroads in the Territory of Alaska and for other purposes." In the hearings on this bill it was asserted that its purpose was to assist in the settlement and development of Alaska, and it was argued that inasmuch as the Government was the proprietor of most of the lands and resources of Alaska the Territory ought to be developed by the Government.⁹⁷ To the settlement of the interior of Alaska, to its agricultural resources, and to the development of its coal and other mineral resources, the Government railroad was regarded as invaluable.⁹⁸

⁹² Annual Report of Secretary of Interior, 1925, p. 63.

⁹³ Rept. of Governor, 1925, p. 58.

⁹⁴ *Ibid.*, 1923, p. 69.

⁹⁵ 67th Cong., 1st Sess., Hearings, H. Com. on Terr. on H. R. 5694, p. 184; see also U. S. Comp. Stat., 1918, sec. 5249r.

⁹⁶ Annual Rept. of Governor, 1924, p. 8.

⁹⁷ 63rd Cong., 1st Sess., Hearings, S. Com. on Terr., on S. 48, p. 16.

⁹⁸ *Ibid.*

This bill was passed by the Congress and approved on March 12, 1914, giving the President full power, as indicated in the title, to proceed with the work of constructing the railroad.⁹⁹ The President delegated the work of constructing this railroad to the Interior Department, which was in turn entrusted by the Secretary of the Interior to the Alaskan Engineering Commission, composed of three members appointed by the President. The cost of building the road was fixed at \$35,000,000.¹⁰⁰

The President by Executive order on April 10, 1915, selected for the road the Susitna route, commencing at the town of Seward on Resurrection Bay, passing up the Susitna Valley, and along the Nenana River to Fairbanks in the interior, a total distance of about 470 miles.¹⁰¹ The Alaska Engineering Commission submitted to the Secretary of the Interior a plan of activities for the year 1915, and the work of actual construction began in May, 1915.¹⁰² By the summer of 1919, the original sum authorized to build the road had become practically exhausted, and the commission and the Secretary of the Interior asked for \$17,000,000 additional to complete the railroad. In support of this request it was stated that the construction of the railroad had been prosecuted under most adverse conditions, due in large measure to the war, and that the completion of the work would have been accomplished within the amount originally authorized and at a much earlier date "than is now possible," but for the heavily increased cost of labor, material and supplies occasioned by the war.¹⁰³ It was stated by the Secretary of the Interior that "It (the railroad) has not been built as cheaply as expected, because it has been built on a rising market for everything that went into its construction."¹⁰⁴

⁹⁹ U. S. Comp. Stat. 1918, sec. 3593a, p. 531.

¹⁰⁰ Ibid.

¹⁰¹ Annual Rept. Secretary of Interior, 1921, p. 210.

¹⁰² Ibid., p. 211.

¹⁰³ 66th Cong., 1st Sess., H. Rept. No. 231.

¹⁰⁴ 66th Cong., 1st Sess., Hearings, H. Com. on Terr. on H. R. 7417, p. 8.

It was confidently asserted that seventeen millions would be sufficient to complete the road and put it into operation, and on October 18, 1919, Congress authorized the additional sum of \$17,000,000 to complete the construction of the road on or before December 31, 1922.¹⁰⁵

These funds were soon exhausted, and in November, 1921, an additional \$4,000,000 was authorized by Congress to complete the construction and equipment of the Alaska railroad.¹⁰⁶ Again this sum proved to be insufficient, and by an Act approved May 24, 1922, Congress granted the Alaska Engineering Commission an additional \$3,110,210 to complete the construction and equipment of the railroad.¹⁰⁷ Despite former predictions even this sum was inadequate, and Congress by an act approved January 24, 1923, granted an additional \$889,140 for the purpose of completing the Alaska railroad from Seward to Fairbanks.¹⁰⁸

The rails of the Government railroad finally reached Fairbanks in June 1923, and the official completion of the road was commemorated on July 15, 1923, by the driving of a golden spike by the late President Harding at North Nenana.¹⁰⁹ By order of the Secretary of the Interior, as has been previously indicated, the designation of the Alaska Engineering Commission was changed in August, 1923, to the Alaska Railroad, and on October 1, 1923, a single general manager was appointed to take charge of the construction, maintenance and operation of the railroad.¹¹⁰

The Alaska Railroad Commission has been charged with extravagance, inefficiency and unnecessary delay in the construction and equipment of the Alaska railroad.¹¹¹ Whether this be true or not, the fact remains that to complete the road, and furnish it with necessary facilities for the per-

¹⁰⁵ U. S. Comp. Stat., 1925, p. 250.

¹⁰⁶ *Ibid.*

¹⁰⁷ 42 Stat. L., 594, pt. 1.

¹⁰⁸ *Ibid.*, p. 1217.

¹⁰⁹ Rept. of Governor, 1924, p. 8.

¹¹⁰ *Ibid.*

¹¹¹ See John E. Ballaine, *Strangling of the Alaska Railroad*, Seattle, 1923.

formance of its transportation functions, something like \$12,000,000 is estimated to be necessary.¹¹² According to the governor's report for 1925, this expenditure for completion is due to the fact that in the original construction the completion of the line at the earliest possible date was deemed to be of great importance, and that for this reason many temporary expedients of construction were adopted, the result of which is that the cost of maintenance is quite out of proportion to what it will be when the road is completed.¹¹³ The road as it is now constructed is kept in safe condition only by constant repairing, and much of the work done in summer is destroyed by the severe winters.

The Alaska Railroad furnishes passenger-train service, consisting of three round trips per week between Seward and Fairbanks, with one additional trip between Anchorage and Seward on Sunday, during July and August, and two round trips per week between Seward and Fairbanks from August 31 to June 21. No sleeping-car or dining car service is maintained on these trains, but there is a stopover at one point on the lines for lodging and at two points for meals.¹¹⁴

It is reported that during the fiscal year 1925, the Alaska Railroad made slight progress in economy and efficiency of operation, but during the same period there was a decrease in the tonnage of commercial freight handled by the road.¹¹⁵ Nor has there been any appreciable progress in the development of traffic for the road. Indeed the lack of traffic constitutes the outstanding hindrance to the success of the Alaska railroad, and the failure to develop such a traffic defeats the avowed purpose for which the road was constructed.

If one is to pass judgment on the Alaska Railroad venture, it can be positively stated that thus far the road has not been a success. What its ultimate success or failure will be, only time can demonstrate. However, it would seem to the writer that this railroad is a necessary agent in the development of

¹¹² Rept. of Governor, 1925, p. 7.

¹¹³ *Ibid.*, p. 7.

¹¹⁵ *Ibid.*, p. 8.

¹¹⁴ *Ibid.*, p. 11.

the resources of interior Alaska, but that this development is essential to the successful operation of the railroad.

Under the above system of Federal administration in Alaska one notes a wide division of authority and responsibility, and an effort to direct such administration at long distance in compliance, for the most part, with general regulations designed for the United States as well as Alaska. This long distance administration under regulations made by many Washington authorities has been a very serious hindrance to the development of Alaska. The multiplicity of Federal agencies as outlined above, with their overlapping jurisdiction, and divided responsibility, has resulted in much confusion and red tape. There is no single, centralized, responsible head for the development of Alaska, which is primarily the cause of the lack of such development.

In recent years much has been said concerning the red tape, confusion, delay, and inefficiency involved in the present system of Federal administration in Alaska.¹¹⁶ Perhaps the strongest denunciation of this system is that of the late Secretary Lane, of the Department of the Interior, under the caption "Red Tape in the Government of Alaska."¹¹⁷ "Alaska's problems," Secretary Lane points out, "are largely peculiar to Alaska. Our present system of government there is heterologous. Instead of one government in Alaska we have a number, interlocked, overlapped, cumbersome, and confusing."¹¹⁸ As illustrative of these conditions, it is pointed out that lands in the forest reserves must pass through both the Forestry Service and the General Land Office before a settler has any assurance of title;¹¹⁹ that the duty of enforcing the game laws is shared by the Departments of Commerce and Agriculture, fur-bearing animals being under the jurisdiction of the former, while game animals are controlled by the latter;¹²⁰ that mineral claims in the forest reserves

¹¹⁶ 67th Cong., 1st Sess., on Hearings, H. Com. on Terr., H. R. 5694, *passim*.

¹¹⁷ *Ibid.*, pp. 110-140.

¹¹⁸ *Ibid.*, p. 111.

¹²⁰ *Ibid.*, p. 123.

¹¹⁹ *Ibid.*, p. 116.

must be investigated and approved by the Forestry Service before the General Land Office may grant patents. The Secretary points out the case of one town-site entry where, "In the course of settling the affairs of this town site the papers in the case made so many trips between Alaska and Washington that it is impossible to trace their actual journeys, as even the records are now divided among several departments."¹²¹ It might have been further pointed out in this criticism of Secretary Lane's that four bureaus have funds for the construction of wagon roads in the Territory.¹²² In emphasizing the need for concentration and coordination of administrative authorities in Alaska Mr. Lane said:

Alaska's remoteness alone makes anything like supervision by bureaus located in Washington more or less perfunctory and superficial. What we now have in Alaska is little more than a number of independent and unrelated agents, acting largely upon their own initiative, each attending only to some special branch of police work, and no branch adequately organized to cope with its own problems, without even attempting to coordinate its work with that of the other branches.¹²³

Perhaps this is an overstatement of the situation, but the fact remains that something needs to be done for the development of Alaska's resources and the opening of the Territory to permanent settlement. Such has been the diversity of views and confusion attending the hearings of Alaskan matters by congressional committees that one hesitates to express any view as to what should be done in the premises. However, it would seem that less delay and greater efficiency in the administration of Alaskan affairs would be achieved by the concentration of all Federal control in the Territory, with the exception of certain purely national functions, in a single Federal agency resident in Alaska. Such an agency would preferably be under the control of the Department of Interior and directly responsible to the Secretary of the Interior. This system would eliminate all lengthy and involved

¹²¹ Ibid., p. 119.

¹²² Annual Reports, Dept. of Interior, 1919, vol. ii, p. 410.

¹²³ Ibid., p. 133, n. 116.

correspondence between agents in the field and the several bureaus in Washington, and would place the administration of Alaska in the hands of those able to make an intimate and first hand study of all Alaskan questions.

It would undoubtedly be well to except from any plan for the consolidation of administrative agencies in Alaska such purely national and scientific or investigative services as present no problems that are peculiar to Alaska, or whose activities in the Territory are of equal interest to all parts of the United States. Such are the activities of the Geological Survey, the Coast and Geodetic Survey, the Biological Survey, the Public Health Service, and the Bureau of Fisheries, which are carried on as a part of a general work of national application and which require highly expert knowledge and cooperation. Likewise there should be no change in the authority or activities in Alaska of the Departments of Justice, the Treasury, the Post Office and certain general functions of the Army and Navy Departments there, all of which activities are so purely national in scope and of such interest and benefit to the whole country alike as to render unjustifiable any division of these duties as to Alaska.

It was a plan of this kind that was proposed in a bill upon which extensive hearings were held in the first session of the Sixty-seventh Congress. This bill proposed to create in the Department of the Interior a board of five members to be known as the Alaskan Development Board, and to include the Governor of the Territory, the president of the Board of Road Commissioners for Alaska, and three other persons appointed for overlapping terms of six years by the President with the consent of the Senate. To this board were to be transferred most of the functions performed by the more than thirty services in Washington. The board was to report to, and be responsible to, the Secretary of the Interior.¹²⁴ On account of the bureau opposition which it was feared it

¹²⁴ 67th Cong., 1st Sess., Hearings, H. Com. on Terr., on H. R. 5694, pp. 8-14.

would encounter, the bill never received the sanction of Congress.

But the lack of concentration of responsibility within the National Government for the work undertaken by it is not the only unsatisfactory condition that is to be found in the Administration of Alaskan affairs. No lesser evil than this is the confusion and inefficiency that results from the overlapping and duplicated work of the Federal and Territorial agencies in Alaska. Little serious or intelligent effort has been made properly to distribute responsibilities between the National and Territorial Governments. Confusion exists both with respect to the agencies through which these responsibilities are met and the sources of revenue by which they are supported. There are a number of cases in which the National Government and the Territorial Government are maintaining agencies for doing the same work.

The reader will recall that the National Government directly participates in such local functions as the construction of roads, trails, and bridges, the provision and maintenance of schools, the inspection of mines, the provision of medical relief, and in other ways.

It will be recalled that the task of road building and maintenance in Alaska is carried on partly by the Bureau of Public Roads, a Federal agency; partly by the Alaska Road Commission, also a Federal agency; and partly by the Territorial Board of Road Commissioners. The work of the first of these agencies is confined to the area within or adjacent to the national forests. This bureau operates in Alaska through a branch office established July 1, 1920, under the supervision of an assistant district engineer, and is supported by Federal funds provided by the Federal Highway Act approved July 11, 1916, and later amendments thereto. In addition to Federal funds, certain cooperative funds are made available by the Territory.¹²⁵

The Alaska Road Commission, created by an act of Congress approved January 27, 1905, as amended May 14, 1906,

¹²⁵ Report of Governor, 1926, pp. 29-30.

is a Federal agency composed of three Army officers, and carries on its work under the direction of the Chief of Engineers and the Secretary of War.¹²⁶ The funds disbursed for the support of the work of this agency are made available under army appropriation act which carries an annual appropriation for the "Construction and maintenance of roads, bridges and trails, Alaska"; under the Alaska Fund, 65 per cent of which goes for the construction of roads, trails and bridges in the Territory;¹²⁷ and under appropriations made for roads and trails in the National Parks.¹²⁸ In addition to these Federal funds, the Territory allots certain funds to be disbursed by the Commission. These funds are deposited in the Treasury of the United States and are disbursed by the disbursing officer of the Alaska Road Commission in the same manner as Federal funds directly appropriated by Congress. The total amount expended for all construction and maintenance to June 30, 1926, was \$10,813,165.11. Of this amount \$6,900,600 was appropriated by acts of Congress, \$3,190,017.78 was allotted from the Alaska fund, and \$722,547.33 from Territorial appropriations and contributions.

The construction and maintenance of roads, bridges, trails and ferries in Alaska is also carried on by a purely local agency of the Territorial Government, the Territorial Board of Road Commissioners. The work of this agency is supported by appropriations made by the territorial legislature, and by 25 per cent of the receipts of the national forests in the territory.¹²⁹

It is thus seen that there are three agencies, two Federal and one Territorial, engaged in road and trail building in Alaska, and that the money expended by the Federal agencies is derived partly from the territorial and partly from the Federal treasury, and that expended by the territorial agency is derived partly from the Federal and partly from the territorial treasury.

With regard to education, it will be recalled that schools

¹²⁶ U. S. Comp. Stat., 1918, p. 533.

¹²⁸ Report of Governor, 1926, p. 28.

¹²⁷ *Ibid.*, sec. 3592.

¹²⁹ *Ibid.*, pp. 31-32.

for the training of white children and children of mixed blood are administered by a territorial agency, the Territorial Board of Education. The funds for the support of these schools are derived largely from the Territorial treasury, but the Federal law provides that 25 per cent of the Alaska fund shall go to the support of those schools outside of incorporated towns. Schools for the education of the natives are administered by the Bureau of Education, through its Alaska division, and funds for their support are provided by special appropriation of Congress.

Here again there is a divided responsibility between federal and territorial agencies both with respect to the sources of revenue used for the promotion of education, and the agencies entrusted with the administration of this revenue.

A similar situation exists with respect to mine inspection. The performance of this function is vested in the Bureau of Mines of the Department of the Interior under the special direction in the Territory of a Federal mine inspector. Funds for this purpose are provided by the general appropriations for the Bureau of Mines, but Territorial funds are also provided to meet a part of the expenses of Federal inspection.¹³⁰

Finally, it should be pointed out that the Public Health Bureau of the Treasury Department makes regulations regarding public health in Alaska, while the Territory has its own public health service under the direction of its Commissioner of Health. Congress makes annual appropriations for the medical and sanitary relief of the natives and for the relief of indigent persons. Funds for the care of the indigent, it will be recalled, are secured from the Alaska fund, ten per cent of which is by law devoted to this purpose. The territorial legislature also makes appropriations for the care of the indigent and has developed territorial administrative machinery for the administration of these appropriations. A Home for Pioneers is maintained at Sitka.¹³¹ There are also advisory boards for the relief of the needy

¹³⁰ *Ibid.*, pp. 53-54.

¹³¹ Alaska Session Laws, 1915, chap. lxiv, p. 117; 1917, chap. xlix, p. 91.

appointed by the Governor for each judicial division, funds being appropriated by the Territorial legislature for that purpose.¹³² A Board of Children's Guardians in each judicial division, consisting of the judge of the division, the United States Marshal, and one woman citizen appointed by the Governor and supported by territorial appropriations, cares for dependent children. Here again use is made of both Federal and territorial funds for the same purpose, administered partly by a Federal agency and partly by territorial agencies.

This use of Federal agencies in the performance of purely local functions is unfortunate both from the point of view of the National Government and from the point of view of the Territory. It places upon the National Government a burden that does not properly belong to it, and also does violence to the principle of local self-government which the United States has followed in the cases of Hawaii, Porto Rico, and the Philippines. There is little reason, if any, why the National Government should undertake through its own agencies such work as the construction of roads, trails and bridges, the inspection of mines, the care of the indigent and insane, and the operation of a school system in Alaska. The National Government has erected Alaska into a body corporate and has given the Territory, theoretically at least, a system of local government, but has failed to turn over to this local government full powers and responsibilities for the management of its local affairs. The National Government should be relieved of direct responsibility for all work that can be delegated to territorial agencies, and the Territorial government should be allowed the full measure of powers and responsibilities to which it is entitled.

It will also be noticed that there is a blending of national and territorial finances in Alaska. There are two financial systems—one national and one territorial—and revenues collected by both of these systems are sometimes devoted to the same purpose. The Federal Government derives most of its

¹³² *Ibid.*, 1919, chap. xlv, pp. 131-134.

revenue in the Territory from business and trade licenses issued outside of incorporated towns. This revenue is collected by the clerks of the district courts, deposited to the credit of the Treasurer of the United States, and by him credited to the Alaska fund, which fund was created by act of Congress approved January 27, 1905.¹³³ As previously stated in this chapter, sixty-five per cent of the money paid into this fund goes for the construction and maintenance of roads and trails outside of incorporated towns; 25 per cent is appropriated for the maintenance of schools outside of incorporated towns; and ten per cent is appropriated for the relief of indigents.¹³⁴ Revenue is also derived from the taxes levied by the Federal Government within incorporated towns from business and trade licenses which are paid by the clerks of the district courts directly to the treasurers of the towns.

Entirely separate and distinct from revenues received by the Federal Government is the fiscal system of the Territory controlled by laws enacted by the Territorial legislature.¹³⁵ Under the present law, license taxes are imposed upon a long list of professions, trades and businesses. There is no general system of property taxation in effect in Alaska, but the Territory receives other revenues in addition to license taxes. Railroads pay a tax of 1 per cent of their gross receipts; twenty-five per cent of the receipts of the national forests in the Territory accrue to it. There is in effect a poll tax act, levying for school purposes a tax of five dollars per annum on all men between the ages of 21 and 50 years. Estates of deceased persons without heirs escheat to the Territory. In 1919 the legislature passed inheritance and profits tax laws, but thus far only meagre results have been realized from these. License taxes collected and other revenues accruing to the Territory are covered into and disbursed from the Territorial treasury. In connection with its financial system, Alaska does not have a systematic budget. This constitutes one of the chief needs of the Territory.

¹³³ Report of Governor, 1926, p. 84.

¹³⁴ *Ibid.*

¹³⁵ Alaska Session Laws, 1921, chap. xxxi.

CHAPTER VII

SUMMARY AND CONCLUSIONS

The foregoing pages indicate the many and serious disabilities to which Alaska has been subjected on account of the reluctance of Congress to provide her with an adequate system of law and administration. For seventeen years she was without any form of civil government and almost without law of any kind; for thirty-two years without an Alaskan criminal and civil code and without any effective machinery for the serving of process and the fair trial of offenders against the law; for thirty-nine years without a Delegate in Congress; and for forty-five years without a legislative assembly or any measure of home rule.

The uncertainty which long existed as to the legal and political status of the natives of Alaska and the persistent failure of Congress to define their status, subjected them to very great economic, as well as political and legal, disabilities. Finally, in 1915, the Territorial Legislature, acting under authority of the organic act of 1912, provided a means whereby these natives may establish their citizenship, and thereby gain entrance to various services and enterprises to which they were formerly barred on account of their inability to prove their citizenship.

The present judicial system of Alaska as established by the civil code of 1900, and subsequent amendments thereto, provides a fairly adequate machinery for the serving of process and the trial of those who commit offences against the law. For the real enforcement of law and the detection and prevention of crime, however, the Territory is still in dire need. Outside of the incorporated towns there is no police protection, except that which is afforded by various departmental wardens and other federal employees. The solution of this problem, it would seem, can best be effected, and

should be effected, by the establishment under the Department of Justice, of a Federal Police force in Alaska. At present the agencies for the enforcement of law in Alaska are diffused among various departments. It would seem the part of wisdom to consolidate all of these agencies under the Department of Justice.

Alaska's long and patient, but persistent and determined, struggle for home rule came to an end in 1912 with the organic act of that year. The legislature of the Territory, however, has been unable to exercise the full powers usually granted to such bodies. In order to secure the passage of the Act, certain "vested interests" had to be satisfied by placing some very stringent limitations upon the power of the legislature. These limitations have not yet been removed by Congress. The welfare of the Territory, it seems clear, would be enhanced by the extension of a wider power to the Territorial legislature, especially with reference to the game and fisheries.

But the struggle for political recognition is not the only struggle in which Alaska has been engaged. She is still engaged in another struggle of equal and perhaps greater importance. Since 1912 her efforts have been directed toward economic development, for which she has been, and is, dependent upon the action of Congress. The chief cause for the lack of the development of the resources of Alaska and the permanent settlement of her interior has been, and is, the system of Federal administration which obtains there. Practically all of the land and natural resources of Alaska are the property of the United States, yet there is no centralized responsible head for the development of this vast property. Instead there is a wide division of authority and responsibility. The task, and the duty, before Congress is to disentangle the departmental red tape as exhibited in the multiplicity of Federal agencies, with their overlapping jurisdiction and divided responsibility, which now operate in Alaska.

It would seem, as has been suggested previously, that this problem can best be solved by consolidating all Federal control in Alaska, with the exception of purely national and scientific or investigative functions, in a single Federal agency under the Department of the Interior. Under such a system, the writer believes that Alaska could be truly regarded as "an empire in the making."

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